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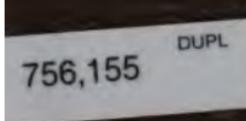
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PUBLIC GENERAL ACTS

RELATING TO

RAILWAYS.

1 & 2 VICT. cap. 98.

An Act to provide for the Conveyance of the Mails by Railways. [14th August, 1838.]

WHEREAS it is expedient that provision should be made Preamble. by law for the conveyance of the mails by railways at a reasonable rate of charge to the public :

1. Be it enacted, by the Queen's most excellent Majesty, *Conveyance of Mails.* by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all Postmaster cases of railways already made or in progress, or to be General hereafter made within the United Kingdom, by which may require passengers or goods shall be conveyed in or upon carriages company drawn or impelled by the power of steam, or by any locomotive or stationary engines, or animal or other power the mails whatever, it shall be lawful for the Postmaster-General, on their by notice in writing under his hand delivered to the company of proprietors of any such railway, to require that the mails or post letter bags shall, from and after the day to be named in any such notice, (being not less than twenty-eight days from the delivery thereof,) be conveyed and forwarded by such company on their railway, either by the ordinary trains of carriages, or by special trains, as either by need may be, at such hours or times in the day or night ordinary as the Postmaster-General shall direct, together with the or special guards appointed and employed by the Postmaster-General in charge thereof, and any other officers of the post-office ; and thereupon the said company shall, from and after the day to be named in such notice, at their own costs, provide sufficient carriages and engines on such railways for the conveyance of such mails and post letter bags to the satisfaction of the Postmaster-General, and receive, take up, carry, and convey by such ordinary or special trains of carriages or otherwise, as need may be, all such mails or post letter bags as shall for that purpose be tendered to them, or any of their officers, servants, or agents, by any officer of the post-office and also receive take up, carry,

Conveyance and convey, in and upon the carriages carrying such mails or post letter bags, the guards in charge thereof, and any

other officers of the post-office, and shall receive, take up, deliver, and leave such mails or post letter bags, guards, and officers at such places in the line of such railway, on such days, at such hours or times in the day or night, and subject to all such reasonable regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, and times of arrival, as the Postmaster-General shall in that behalf from time to time order or direct:

Amended by the 7 & 8 Vict. c. 85, s. 11. *Provided always, that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the directors of such railway or railways for the conveyance of passengers by their first class trains; but that no alteration in the rate of speed of any train by which the mails shall be conveyed shall be made until six calendar months previous notice shall be given to the Postmaster-General of any such intended alteration.*

Carriages to be exclusively appropriated. 2. And be it enacted, That it shall be lawful for the Postmaster-General (if he shall see fit) to require that the whole of the inside of any carriage used on any railway for the conveyance of mails or post letter bags shall be exclusively appropriated for the purpose of carrying the mails.

Separate carriages for sorting letters, to be provided by the company. 3. And be it enacted, That the company of proprietors of any such railway shall, on being required so to do by the Postmaster-General, provide and furnish (in addition to the carriages aforesaid) a separate carriage or separate carriages, fitted up as the Postmaster-General, or such person as he shall nominate in that behalf, shall direct, for the purpose of sorting letters therein, and shall forward the same carriage or carriages by their railway, at such hours or times, and subject to all such reasonable regulations as aforesaid, as the Postmaster-General shall in that behalf order or direct; and such company of proprietors shall receive, take up, carry, and convey in any such last-mentioned carriage or carriages all such post letter bags and officers of the post-office as the Postmaster-General shall reasonably require, and shall deliver and leave any post letter bags and officers of the post-office at such places on the line of the railway as the Postmaster-General shall in that behalf from time to time reasonably order and direct.

Mail coaches and carts to be conveyed on railway. 4. And be it enacted, That in case the Postmaster-General shall at any time be desirous of sending by any such railway any of her Majesty's mail coaches or mail carts, with the mails or post letter bags and guards thereof, and carriages for sorting letters, with any officers of the post-office therein, instead of sending the said mails or

post letter bags, guards, and officers of the post-office by *Conveyance* carriages to be provided by such railway company as *of Mails*. — aforesaid, then and in any such case such railway company shall, at the request of the Postmaster-General, signified by such notice as aforesaid, cause such mail coaches or mail carts, with the mails or post letter bags and guards thereof, and carriages for sorting letters, with any officers of the post-office therein, to be conveyed by the usual or proper trucks or frames on their said railway, subject to such regulations and restrictions of the Postmaster-General as hereinbefore mentioned.

5. And be it enacted, That for the greater security of Regulations the mails or post letter bags so to be carried or conveyed of Postmas- by railways, the company of proprietors of such respective ter-General, railways along which such mails or post letter bags, mail to be ob- coaches, or carts and carriages for sorting letters, shall be served by so required by the Postmaster-General to be conveyed, company. and their respective officers, servants, and agents, shall obey, observe, and perform all such reasonable regulations respecting the conveyance, delivering, and leaving of such mails and post letter bags, guards and officers of the post- office, mail coaches, or carts and carriages, on any such railways, or on the line thereof, as the Postmaster-General, or such officer of the post-office as he shall nominate in that behalf, shall in his discretion from time to time give or make : Provided always, that it shall not be lawful for Officer of any officer or servant of the post-office to interfere with post-office or give orders to the engineer or other person having the not to in- charge of any engine upon any railway along which mails terfere with or post letter bags shall be conveyed ; but if any cause of person hav- complaint shall arise, the same shall be stated to the con- ductor or other officer of the railway company having the of engine. charge of the train, or to the chief officer at any station upon the railway ; and in case of any default or neglect on the part of any officers or servants of the railway com- pany to comply with any of the regulations of the Post- master-General or other officer of the post-office so to be nominated as aforesaid, the railway company shall be wholly responsible for the same.

6. And be it enacted, That every company of proprietors Remunera- of any railway along which such mails or post letter bags, tion to com- mail coaches, carts, or carriages shall be so required by pany for the Postmaster-General to be conveyed, shall be entitled conveyance to such reasonable remuneration to be paid by the Post- master-General to any such company of proprietors for the conveyance of such mails, post letter bags, mail guards, and other officers of the post-office, mail coaches, carts, and carriages, in manner required by such Postmaster- General, or by such officer of the post-office as he shall in

Conveyance that behalf nominate as aforesaid, as shall (either prior to
of Mails.) or after the commencement of such service) be fixed and

agreed on between the Postmaster-General and such company of proprietors, or in case of difference of opinion between them, then as shall be determined by arbitration as hereinafter provided, but so that the services which may be required by the Postmaster-General, or by such officer of the post-office as he in that behalf shall nominate as aforesaid, to be performed by any such company of proprietors, be not suspended, postponed, or deferred by reason of such remuneration not having been then fixed or agreed on between the said Postmaster-General and such company of proprietors, or by reason of the award on any reference to arbitration to determine the remuneration not having been then made.

Agreements 7. And be it enacted, That notwithstanding any agreement entered into between the Postmaster-General and any such company, or any award to be made on any such reference as aforesaid, fixing the amount of remuneration to be paid to such company for any services to be rendered by them as aforesaid, it shall be lawful and competent to and for the Postmaster-General, by notice in writing, to require, from and after the day to be named in any such notice, not being less than twenty-eight days from the delivery thereof, any addition to be made to the services in respect of which such agreement shall be entered into or award made; and in any such case, and also in case of a discontinuance of any part of such services as hereinafter provided, a fresh agreement shall be entered into between the Postmaster-General and such company, regulating the future amount of remuneration to be paid by the Postmaster-General to such company for such increased or diminished services, as the case may be; or if the parties cannot agree on such amount, the same shall be referred to arbitration in like manner as hereinbefore is mentioned and hereinafter provided as to any original agreement; and such arbitrators shall have power to award any compensation they may consider reasonable to be paid to any railway company for any loss that may have been occasioned to them by the discontinuance or alteration of the services previously agreed to be performed by them by any train or carriage specially required by the Postmaster-General to be forwarded for the conveyance of the mails, but so that nevertheless such increased or diminished services shall not be suspended, postponed, or deferred by reason of the amount of such increased or diminished remuneration not having been then fixed or agreed on between the Postmaster-General and such company of proprietors, or by reason of the award on any reference to

arbitration to determine the amount of such increased or diminished remuneration not having been then made. *Conveyance of Mails.*

8. And be it enacted, That it shall be lawful for the Postmaster-General and he is hereby authorized, at any time during the continuance of the services of any company of proprietors as aforesaid, to give to such company, by writing under his hand, six calendar months' previous notice that such services or any part thereof shall cease and determine; and thereupon, at the expiration of such six calendar months' notice, the said services, or such part thereof as aforesaid, and the remuneration for the same, shall cease and determine.

9. And be it enacted, That it shall be lawful for the Postmaster-General at any time during the continuance of the services of any company of proprietors as aforesaid, may terminate service of company on notice. —
Postmaster General may terminate service of company on notice.
General may termi- nate ser- vices of com- pany without giving any previous notice, or on giving any notice less than six calendar months in respect thereof, and thereupon the said services shall cease and determine accordingly: Provided nevertheless, that in case the Postmaster-General shall, without giving six calendar months' notice as aforesaid, at any time determine the services to be required by the Postmaster-General of any company of proprietors, or any part of such services, made to without any cause whatever, or for any cause other than the default by such company of proprietors in the performance of any of the services to be required of them by the Postmaster-General, or the breach by such company of proprietors of any of their engagements with the Postmaster-General, then and in any such case the Postmaster-General shall make to such company a full and fair compensation for all loss thereby occasioned, the amount whereof in case the parties differ about the same shall be ascertained by arbitration as hereinafter mentioned.

10. And be it enacted, That on all carriages to be provided for the service of the post-office on any such railway, to be painted on the outside be painted the royal arms, in lieu of the name of the owner and of the number of the carriage, and of all other requisites, if any, prescribed by law in respect of carriages passing on any such railway; but the want of such royal arms on any carriage belonging to or used by the post-office shall not form an objection to such carriage running on any railway, anything to the contrary notwithstanding.

11. And be it enacted, That it shall not be competent Bye-laws of or lawful to or for the company of proprietors of any company railway to make any bye-laws, orders, rules, or regulations which shall militate against or be contrary or re-

Bye-laws of
company
not to be re-
pugnant to

Conveyance pugnant to any of the enactments herein contained ; and of Mails. — provisions of this Act. that if any company of proprietors shall make or shall have made any such bye-laws, orders, rules, or regulations, either prior or subsequently to the Postmaster-General signifying to the said company his intention that the mails or post letter bags, mail coaches, carts, or carriages shall be conveyed by such railway, all such bye-laws, orders, rules, and regulations, so far as they shall militate against or be contrary or repugnant to any of the enactments herein contained, shall be and be deemed absolutely void and of no effect, in like manner as if such bye-laws, orders, rules, or regulations, had never been made or passed, anything to the contrary in anywise notwithstanding.

Penalty for refusing or neglecting to convey mails,

or to observe regulations of Postmaster General.

Company to give security by bond when required

12. And be it enacted, That if the company of proprietors of any railway, or any of their respective officers, servants, or agents, shall refuse or neglect to carry or convey any mails or post letter bags, when tendered to them for such purpose by the Postmaster-General or any officer of the post-office, or shall refuse to carry on their railway any mail coaches, carts, or carriages as hereinbefore provided, when so required by the Postmaster-General, or shall refuse or neglect to receive, take up, deliver, and leave any such mails or post letter bags, mail guards, or other officers of the post-office, mail coaches, carts, or carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as the Postmaster-General shall from time to time reasonably direct or appoint, as hereinbefore provided, or shall not obey, observe, and perform all such regulations respecting the conveyance of the mails and post letter bags, mail coaches, carts, and carriages on any such railways as the Postmaster-General or such officer of the post-office as he shall nominate in that behalf, shall make for the purposes aforesaid, then and in any such case the company of proprietors who, or whose officer, servant, or agent, shall so offend in the premises, shall for every such offence forfeit and pay a sum not exceeding twenty pounds ; provided nevertheless, that the payment of or liability to such penalty shall not in any manner lessen or affect the liability of any such company under any bond which may have been given by them under the provisions hereinafter contained.

13. And be it enacted, That it shall be lawful for the Postmaster-General, if he shall so think fit, to require the company of proprietors of any railway already made or in progress, or to be hereafter made within the United Kingdom, to give security by bond to her Majesty, her heirs

and successors, conditioned to be void if such company shall from time to time carry or convey, or cause to be carried or conveyed, all such mails or post letter bags, mail guards, and other officers of the post-office, mail coaches, carts, and carriages in manner hereinbefore mentioned, when thereunto required by the Postmaster-General, or any officer of the post-office duly authorized for that purpose, and shall receive, take up, deliver, and leave all such mails or post letter bags, guards and officers, mail coaches, carts, and carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as hereinbefore mentioned, and shall obey, observe, and perform all such regulations respecting the same as the Postmaster-General shall reasonably make, and shall well and truly do and perform, and cause to be done and performed, all such other acts, matters, and things, as by this Act are required or directed to be done or performed by or on the part or behalf of such company, their officers, servants, and agents; and every such bond shall be taken in such sum and in such form as the Postmaster-General shall think proper; and every such security shall be renewed from time to time whenever and so often as such bond shall be forfeited, and also whenever and so often as the Postmaster-General renewed shall in his discretion require the same to be renewed; and if any company of proprietors of any such railway as aforesaid shall, when so required as aforesaid, refuse or neglect, for the space of one calendar month next after the delivery of any notice for such purpose to them given by or from the Postmaster-General, to execute to her Majesty, her heirs and successors, such bond to the effect and in manner aforesaid, or shall at any time refuse or neglect to renew such bond whenever and so often as the same shall, by or in pursuance of this Act, be required to be renewed, such company of proprietors shall forfeit one hundred pounds for every day during the period for which there shall be any refusal, neglect, or default to give or renew such security as aforesaid, after the expiration of the said one calendar month.

14. Provided always, and be it enacted, That in all cases in which any railway or part of a railway may, previous to the passing of this Act, have been demised or let by the company of proprietors thereof, the body corporate or company, or other persons to whom the same shall have been so demised or let, their successors, executors, administrators, or assigns, shall during the continuance of such lease be liable to all the provisions of this Act for or in respect of such railway or part of a railway, in lieu of Lessees not being a body corporate or company not to be required to give security above 1000*l.*

Conveyance such company of proprietors, but so that such lessees, (not of Mails. being a body corporate or company,) their executors, administrators, or assigns, shall not be required in respect of any such railway or part of a railway to give security under the foregoing enactment to any amount in any one bond exceeding the sum of one thousand pounds, and shall not in any one year be liable in damages to be recovered upon any bonds which they may have given to any amount exceeding the sum of one thousand pounds and costs of suit.

Service of notices.

15. And be it enacted, That all notices under the provisions of this Act by or on behalf of the Postmaster-General to any company of proprietors of any railway as aforesaid, shall be considered as duly served on any company of proprietors in case the same shall be given or delivered to any one or more of the directors of such company, or to the secretary or clerk of such company, or be left at any station belonging to such company.

Differences between Postmaster-General and company to be settled by arbitration.

16. And be it enacted, That in all cases in which the Postmaster-General and any company of proprietors of any railway shall not be able to agree on the amount of remuneration or compensation to be paid by the Postmaster-General to such company of proprietors for any services performed or to be performed by them as hereinbefore mentioned, the same shall be referred to the award of two persons, one to be named by the Postmaster-General, and the other by such company ; and if such two persons cannot agree on the amount of such remuneration or compensation, then to the umpirage of some third person, to be appointed by such two first-named persons previously to their entering upon the inquiry ; and the said award or umpirage, as the case may be, shall be binding and conclusive on the said parties, and their respective successors and assigns.

After contracts have existed three years, company may refer them to arbitrators to decide as to their continuance.

17. And be it enacted, That after any contract entered into or award made under the authority of this Act shall have continued in operation for a period of three years, it shall be competent for any railway company who may consider themselves aggrieved by the terms of remuneration fixed by such contract or award, by notice under their common seal, to require that it shall be referred to arbitrators to determine whether any and what alteration ought to be made therein ; and thereupon such arbitrators or umpire to be appointed as hereinbefore mentioned shall proceed to inquire into the circumstances, and make their award therein, as in the case of an original agreement : Provided always, that the services performed by such railway company for the post-office shall in nowise be interrupted or impeded thereby.

18. And be it enacted, That in all references to be *Conveyance of Mails.*
 made under the authority of this act, the Postmaster-General, or the railway company, as the case may be, shall nominate his or their arbitrator within fourteen days after notice from the other party, or in default it shall be lawful for the arbitrator appointed by the party giving notice to name the other arbitrator; and such arbitrators shall proceed forthwith in the reference, and make their award therein within twenty-eight days after their appointment, or otherwise the matter shall be left to be determined by the umpire; and if such umpire shall refuse or neglect to proceed and make his award for the space of twenty-eight days after the matter shall have been referred to him, then a new umpire shall be appointed by the two first-named arbitrators, who shall in like manner proceed and make his award within twenty-eight days, or in default be superseded, and so "toties quoties."

19. And be it enacted, That whenever the term "company of proprietors," or "railway company," or "company" is used in this act, the same shall extend to and be construed to include the proprietors for the time being of any railway, whether a body corporate or individuals, and also (during the continuance of any demise or lease as aforesaid) any person, whether a body corporate or company or individuals, to whom any railway or part of a railway may previous to the passing of this act have been demised or let, and their successors, executors, administrators, and assigns, unless the subject or context be otherwise repugnant to such construction; and that the provisions of this act shall be construed according to the respective interpretations of the terms and expressions contained in an act passed in the first year of the reign of her present Majesty, intituled "An Act for consolidating and according to the laws relative to Offences against the Post-office of the United Kingdom, and for regulating the judicial administration of the Post-office Laws, and for explaining certain terms and expressions employed in those laws," so far as those interpretations are not repugnant to the subject or inconsistent with the context of such provisions; and that this present act shall be deemed and construed to be a post-office act within the intent and meaning of the said last-mentioned act; and the pecuniary penalties hereby imposed shall be recovered and recoverable in the manner and form therein particularly mentioned and expressed with reference to the pecuniary penalties imposed by the post-office acts: Provided nevertheless, that any justice of the peace having jurisdiction for any county through which any railway shall pass, in respect of which any penalty or forfeiture under this act shall have been in-

Conveyance curred, shall and may hear and determine any offence of Mails. against this act which may subject any company to a pecuniary penalty not exceeding twenty pounds ; and a summons issued under the post-office acts by any such justice against any railway company for the recovery of any such penalty shall be deemed to be sufficiently served in case either the summons or a copy thereof be delivered to any officer, servant, or agent of such company, or be left at any station belonging to such company.

Act may be amended or repealed. 20. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of Parliament.

3 & 4 VICT. cap. 97.

An Act for regulating Railways.

[10th August, 1840.]

Preamble. WHEREAS it is expedient for the safety of the public to provide for the due supervision of railways :

Opening of Railways. 1. Be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, *That, after two months from the passing of this act, no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given by the company to whom such railway shall belong, to the lords of the committee of her Majesty's privy council appointed for trade and foreign plantations.*

Repealed by 5 & 6 Vict. c. 55, s. 3. 2. *And be it enacted, That if any railway, or portion of any railway, shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway ; and any such penalty may be recovered in any of her Majesty's courts of record.*

Returns to be made by Company. 3. *And be it enacted, That the lords of the said committee may order and direct every railway company to make up and deliver to them returns, according to a form to be provided by the lords of the said committee, of the*

aggregate traffic in passengers, according to the several Board of classes, and of the aggregate traffic in cattle and goods respectively, on the said railway, as well as of all accidents which shall have occurred thereon attended with personal injury, and also a table of all tolls, rates, and charges from time to time levied on each class passengers, and on cattle and goods, conveyed on the said railway; and if the returns herein specified shall not be delivered within thirty days after the same shall have been required, every such company shall forfeit to her Majesty the sum of twenty pounds for every day during which the said company shall wilfully neglect to deliver the same; and every such penalty may be recovered in any of her Majesty's courts of record: Provided always, that such returns shall be required, in like manner and at the same time, from all the said companies, unless the lords of the said committee shall specially exempt any of the said companies, and shall enter the grounds of such exemption in the minutes of their proceedings.

4. And be it enacted, That every officer of any company who shall wilfully make any false return to the lords of the said committee shall be deemed guilty of a misdemeanor.

5. And be it enacted, That it shall be lawful for the lords of the said committee, if and when they shall think fit, to authorize any proper person or persons to inspect any railway; and it shall be lawful for every person so authorized, at all reasonable times, upon producing his authority, if required, to enter upon and examine the said railway, and the stations, works, and buildings, and the engines and carriages belonging thereto: *Provided always, that no person shall be eligible to the appointment as inspector as aforesaid who shall within one year of his appointment have been a director or have held any office of trust or profit under any railway company.*

6. And be it enacted, That every person wilfully obstructing any person, duly authorized as aforesaid, in the execution of his duty, shall, on conviction before a justice of the peace having jurisdiction in the place where the offence shall have been committed, forfeit and pay for every such offence any sum not exceeding ten pounds; and on default of payment of any penalty so adjudged, immediately or within such time as the said justice of the peace shall appoint, the same justice, or any other justice having jurisdiction in the place where the offender shall be or reside, may commit the offender to prison for any period not exceeding three calendar months; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to

Trade may require returns of traffic and accidents, and a table of tolls.

Appoint-
ment of, by
Board of
Trade.

Repealed by
7 & 8 Vict.
c. 85, s. 15

the next ensuing Court of Quarter Sessions in the usual manner.

Bye-Laws.

made before the passing of this act, to be laid before Board of Trade,

otherwise to be void.

Bye-laws hereafter made to be approved of by Board of Trade.

Board of Trade may disallow bye-laws.

Provisions requiring concurrence.

7. And whereas many railway companies are or may hereafter be empowered by act of parliament to make bye-laws, orders, rules, or regulations, and to impose penalties for the enforcement thereof, upon persons other than the servants of the said companies, and it is expedient that such powers should be under proper control ; be it enacted, That true copies of all such bye-laws, orders, rules, and regulations made under any such powers by every such company before the passing of this act, certified in such manner as the lords of the said committee shall from time to time direct, shall, within two calendar months after the passing of this act, be laid before the lords of the said committee ; and that every such bye-law, order, rule, or regulation, not so laid before the lords of the said committee within the aforesaid period, shall, from and after that period, cease to have any force or effect, saving in so far as any penalty may have been then already incurred under the same.

8. And be it enacted, That no such bye-law, order, rule, or regulation made under any such power, and which shall not be in force at the time of the passing of this act, and no order, rule, or regulation annulling any such existing bye-law, rule, order, or regulation which shall be made after the passing of this act, shall have any force or effect until two calendar months after a true copy of such bye-law, order, rule, or regulation, certified as aforesaid, shall have been laid before the lords of the said committee, unless the lords of the said committee shall, before such period, signify their approbation thereof.

9. And be it enacted, That it shall be lawful for the lords of the said committee, at any time either before or after any bye-law, order, rule, or regulation shall have been laid before them as aforesaid shall have come into operation, to notify to the company who shall have made the same their disallowance thereof, and, in case the same shall be in force at the time of such disallowance, the time at which the same shall cease to be in force ; and no bye-law, order, rule, or regulation which shall be so disallowed shall have any force or effect whatsoever, or, if it shall be in force at the time of such disallowance, it shall cease to have any force or effect at the time limited in the notice of such disallowance, saving in so far as any penalty may have been then already incurred under the same.

10. And be it enacted, That so much of every clause, provision, and enactment in any act of parliament heretofore passed as may require the approval or concurrence

of any justice of the peace, court of quarter sessions, or other person or persons, other than members of the said laws by companies, to give validity to any bye-laws, orders, rules, justices, or regulations made by any such company, shall be repealed.

11. And be it enacted, That whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of parliament regulating any of the said companies, or the provisions of this act, have not been complied with on the part of any of the said companies, or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the lords of the said committee shall certify the same to her

Repealed by
7 & 8 Vict.
c. 85, s. 16.

Majesty's Attorney-General for England, or Ireland, or to the Lord-Advocate for Scotland, as the case may require; and thereupon the said Attorney-General or Lord-Advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts: provided always, that no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same.

12. And be it enacted, That no legal proceedings shall be commenced under the authority of the lords of the said committee against any railway company for any offence against this act, or any of the several acts of parliament relating to railways, except upon such certificate of the lords of the said committee as aforesaid, and within one year after such offence shall have been committed.

13. And be it enacted, That it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, guard, porter, or other servant in the employ of such company who shall be found drunk while employed upon the railway, or commit any offence against any of the bye-laws, rules, or regulations of such company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway belonging to such company, or the works thereof respectively, shall be or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains shall be or might be obstructed or im-

Amended
by 5 & 6
Vict. c. 55,
s. 17.

*Railway
servants
guilty of
miscon-
duct.*

peded, and to convey such engine driver, guard, porter, or other servant so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act; and every such person so offending, and every person counselling, aiding, or assisting therein as aforesaid, shall, when convicted before such justice as aforesaid, (who is hereby authorized and required, upon complaint to him made, upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises,) in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

*Justice may
send any
case to be
tried at the
quarter
sessions.*

14. Provided always, and be it enacted, That (if upon the hearing of any such complaint he shall think fit) it shall be lawful for such justice, instead of deciding upon the matter of complaint summarily, to commit the person or persons charged with such offence for trial for the same at the quarter sessions for the county or place wherein such offence shall have been committed, and to order that any such person so committed shall be imprisoned and detained in any of her Majesty's gaols or houses of correction in the said county or place in the meantime, or to take bail for his appearance, with or without sureties, in his discretion; and every such person so offending, and convicted before such court of quarter sessions as aforesaid (which said court is hereby required to take cognizance of and hear and determine such complaint), shall be liable, in the discretion of such court, to be imprisoned, with or without hard labour, for any term not exceeding two years.

*Obstruc-
tions.*

*Punish-
ment of
persons ob-
structing
engines or
carriages.*

15. And be it enacted, That from and after the passing of this act every person who shall wilfully do or cause to be done anything in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed in or upon the same, or shall aid or assist therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court before which he shall have been convicted, to be imprisoned, with or without hard labour, for any term not exceeding two years.

16. And be it enacted, That if any person shall wilfully obstruct or impede any officer or agent of any railway company in the execution of his duty upon any railway, or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon any railway, or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer or agent of the said company, every such person so offending, and all others aiding or assisting therein, shall and may be seized and detained by any such officer or agent, or any person whom he may call to his assistance, until such offender or offenders can be conveniently taken before some justice of the peace for the county or place wherein such offence shall be committed, and when convicted before such justice as aforesaid (who is hereby authorized and required, upon complaint to him upon oath, to take cognizance thereof, and to act summarily in the premises), shall, in the discretion of such justice, forfeit to her Majesty any sum not exceeding five pounds, and in default of payment thereof shall or may be imprisoned for any term not exceeding two calendar months, such imprisonment to be determined on payment of the amount of the penalty.

17. And be it enacted, That no proceeding to be had and taken in pursuance of this act shall be quashed or vacated for want of form, or be removed by certiorari, or be quashed by any other writ or process whatsoever, into any of her Majesty's courts of record at Westminster or elsewhere, for want of any law or statute to the contrary notwithstanding.

18. And whereas many railway companies are bound, by the provisions of the acts of parliament by which they are incorporated or regulated, to make, at the expense of the owner or occupier of lands adjoining the railway, openings in the ledges or flanches thereof (except at certain places on such railway in the said acts specified), for effecting communications between such railway and any collateral or branch railway to be laid down over such lands, and any disagreement or difference which shall arise as to the proper places for making any such openings in the ledges or flanches is by such acts directed to be referred to the decision of any two justices of the peace within their respective jurisdictions: and whereas it is expedient that so much of every clause, provision, and enactment in any act of parliament heretofore passed, as gives to any justice or justices the power of hearing or deciding upon any such disagreement or difference as to the proper places for any such openings in the ledges or flanches of any railway, should be repealed; be it there-

Branch Railways. fore enacted, That so much of every such clause, provision, and enactment as aforesaid shall be repealed.

Board of Trade to determine such disputes in future. 19. And be it enacted, That in case any disagreement or difference shall arise between any such owner or occupier or other persons, and any railway company, as to the proper places for any such openings in the ledges or flanches of any railway (except at such places as aforesaid), for the purpose of such communication, then the same shall be left to the decision of the lords of the said committee, who are hereby empowered to hear and determine the same in such way as they shall think fit, and their determination shall be binding on all parties.

Service of notices. 20. And be it enacted, That all notices, returns, and other documents required by this act to be given to or laid before the lords of the said committee, shall be delivered at or sent by the post to the office of the lords of the said committee; and all notices, appointments, requisitions, certificates, or other documents in writing, signed by one of the secretaries of the said committee, or by some officer appointed for that purpose by the lords of the said committee, and purporting to be made by the lords of the said committee, shall, for the purposes of this act, be deemed to have been made by the lords of the said committee; and service of the same upon any one or more of the directors of any railway company, or on the secretary or clerk of the said company, or by leaving the same with the clerk or officer at one of the stations belonging to the said company, shall be deemed good service upon the said company.

Interpretation of words. 21. And be it enacted, That wherever the word "railway" is used in this act it shall be construed to extend to all railways constructed under the powers of any act of parliament, and intended for the conveyance of passengers

"Railway." in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and wherever "Company" the word "company" is used in this act, it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless the subject or context be repugnant to such construction.

Act may be amended or repealed by any act to be passed in the present session of parliament. 22. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of parliament.

5 & 6 VICT. cap. 55.

*An Act for the better Regulation of Railways,
and for the Conveyance of Troops.
[30th July, 1842.]*

WHEREAS by an Act passed in the third and fourth Preamble. years of the reign of her present Majesty, intituled, "An 3 & 4 Vict. Act for Regulating Railways," provision was made for the c. 97. supervision of railways: and whereas it is expedient for the safety of the public to make further provision for that purpose;

1. Be it enacted by the Queen's most excellent Majesty, Commencement of this by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament act. assembled, and by the authority of the same, That this act shall come into operation on the passing thereof.

2. And be it enacted, That the provisions of the said 3 & 4 Vict. recited act and of this act shall be construed together as one c. 97, & this act, except so far as the provisions of the said recited act are hereby repealed, or shall be inconsistent with the provisions of this act.

3. And whereas by the said recited act it is enacted, *Opening of railways.* that after two months from the passing of the said recited act no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the lords of the committee of her Majesty's privy council appointed for trade and foreign plantations: and whereas by the said recited act it is also enacted, that if any railway or portion of any railway shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway, and any such penalty may be recovered in any of her Majesty's courts of record; be it enacted, That the said recited provisions of the said act shall be and they are hereby repealed.

4. And be it enacted, That no railway or portion of any Notice of railway shall be opened for the public conveyance of passengers until one calendar month after notice in writing intended opening to of the intention of opening the same shall have been given, be given

Opening of railways. by the company to whom such railway shall belong, to the lords of the committee of her Majesty's privy council appointed for trade and foreign plantations, and until ten days after notice in writing shall have been given by the said company to the lords of the said committee of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers, and ready for inspection.

Penalty for opening without notice. 5. And be it enacted, That if any railway or portion of any railway shall be opened without such notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open until the said notices shall have been duly given and shall have expired ; and every such penalty may be recovered in any of her Majesty's courts of record, or in the court of session, or in any of the sheriffs' courts in Scotland.

Board of Trade may postpone the opening if inspector report that the same would be attended with danger. 6. And be it enacted, That if the officer or officers appointed by the lords of the said committee to inspect any such railway or portion of railway shall, after inspection thereof, report in writing to the lords of the said committee that, in his or their opinion, the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, it shall be lawful for the lords of the said committee, and so from time to time, as often as such officers shall after further inspection thereof so report, to order and direct the company to whom such railway shall belong to postpone such opening for any period not exceeding one calendar month at any one time, until it shall appear to the lords of the said committee that such opening may take place without danger to the public ; and if any such railway, or any portion thereof, shall be opened contrary to any such order and direction of the lords of the said committee, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open contrary to such order and direction ; and any such penalty may be recovered in any of her Majesty's courts of record, or in the court of session, or in any of the sheriffs' courts in Scotland : provided always, that no such order as aforesaid shall be binding upon any railway company unless therewith shall be delivered to the said company a copy of the report of the officer or officers on which such order shall be founded.

Proviso.

7. And be it enacted, That every railway company *Accidents.*
 shall, within forty-eight hours after the occurrence upon
 the railway belonging to such company of any accident
 attended with serious personal injury to the public using
 the same, give notice thereof to the lords of the said com-
 mittee; and if any company shall wilfully omit to give
 such notice, every such company shall forfeit to her Majesty
 the sum of five pounds for every day during which the
 omission to give the same shall continue; and every
 such penalty may be recovered in any of her Majesty's
 courts of record, or in the court of session, or in any of the
 sheriffs' courts in Scotland.

8. And be it enacted, That the lords of the said com-
 mittee may order and direct any railway company to make
 up and deliver to them returns of serious accidents
 occurring in the course of the public traffic upon the
 railway belonging to such company, whether attended
 with personal injury or not, in such form and manner as
 the lords of the said committee shall deem necessary and
 require for their information with a view to the public
 safety; and if any such returns shall not be so delivered
 within fourteen days after the same shall have been re-
 quired, every such company shall forfeit to her Majesty
 the sum of five pounds for every day during which the
 said company shall neglect to deliver the same; and every
 such penalty may be recovered in any of her Majesty's
 courts of record, or in the courts of session or in any of the
 sheriffs' courts in Scotland: provided always, that all
 such returns shall be privileged communications, and shall
 not be evidence in any court whatsoever. *Board of Trade may direct returns of accidents, whether attended with personal injury or not.*

9. And whereas by an Act passed in the second and
 third years of her present Majesty, and intituled, "An Act
 to amend an Act of the fifth and sixth years of his late
 Majesty King William the Fourth relating to Highways,"
 it was enacted, that whenever a railway crosses or shall
 hereafter cross any turnpike road, or any other highway
 or statute labour road for carts or carriages in Great
 Britain, the proprietors or directors of the said railway
 shall make and maintain good and sufficient gates across
 each end of such turnpike or other road at each end of the
 said crossings, and shall employ good and proper persons
 to open and shut such gates, so that the persons, carts, or
 carriages passing along such turnpike or other road
 shall not be exposed to any danger or damage by the
 passing of any carriages or engines along the said railway:
 and whereas by the acts relating to certain railways it is
 provided that such gates shall be kept constantly closed
 across the railway except during the time when carriages
 or engines passing along the railway shall have to cross
Gates at level crossings.
2 & 3 Vict. c. 45, s. 1.

*Gates at level crossings.**Gates to be kept closed across the road.**Board of Trade may order that gates be kept closed across the railway.**Fences.**Company to erect and maintain throughout the whole of the line.**Disputes between connecting railways**to be decided by the Board of Trade.*

such turnpike or other road : and whereas experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike or other road instead of across the railway ; be it therefore enacted,

That, notwithstanding anything to the contrary contained in any act of parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along such turnpike or other road shall have to cross such railway ; and such gates shall be of such dimensions and so constructed as, when closed across the ends of such turnpike or other roads, to fence in the railway, and prevent cattle or horses passing along the road from entering

upon the railway while the gates are closed : provided always, that it shall be lawful for the lords of the said committee, in any case in which they are satisfied that it will be more conducive for the public safety that the gates at any level crossing over any such turnpike or other road should be kept closed across the railway, to order and direct that such gates shall be kept so closed, instead of across the road ; and such order of the lords of the said committee shall be a sufficient authority for the directors or proprietors of any railway company to whom such order is addressed for keeping such gates closed, in the manner directed by the lords of the said committee.

10. And whereas it is expedient that further provision be made for the safety of the public in respect of the fences of railways ; be it enacted, That all railway companies shall be under the same liability of obligation to erect, and to maintain and repair, good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices by virtue of the provisions to that effect in the acts of parliament relating to such railways respectively.

11. And be it enacted, That where two or more railway companies whose railways have a common terminus or a portion of the same line of rails in common, or which form separate portions of one continued line of railway communication, shall not be able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, it shall be lawful for the lords of the said committee, upon the application of either of the parties, to decide the questions in dispute between them, so far as the same relate to the safety of the public, and to order and determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne

by either of the parties respectively ; and if any railway company shall refuse or wilfully neglect to obey any such order made upon or against such company by the lords of the said committee pursuant to this provision, such company shall forfeit to her Majesty the sum of twenty pounds per day for every day during which such refusal or neglect shall continue ; and every such penalty may be recovered in any of her Majesty's courts of record, or in the court of session or in any of the sheriffs courts in Scotland.

*Disputes
between
connect-
ing rail-
ways.*

12. And whereas powers of laying down branch lines opening into the ledges or flanches of main lines of railway, and of entering upon and passing along such main lines with carriages and waggons drawn by locomotive engines, or by other mechanical or animal power, and also powers to form roads or railways across existing railways on a level, have been given by various acts relative to railways to the owners or occupiers of lands adjoining the railway, and to other persons with their consent : and whereas experience has shown that the exercise of such powers without limitation would in many cases be attended with danger to the public using such railway ; be it therefore enacted, That if, in the case of any railway on which passengers are conveyed by steam or other mechanical power, it shall appear to the lords of the said committee that such power as aforesaid cannot be so exercised without seriously endangering the public safety, and that an arrangement may be made with a due regard to existing rights of property, it shall be lawful for the lords of the said committee to order and direct that such powers shall only be exercised subject to such conditions as the lords of the said committee shall direct : provided always, that A passenger no railway shall be considered a passenger railway if railway de- two-thirds or more of the gross annual revenue of such fined. railway shall be derived from the carriage thereon of coals, ironstone, or other metals or minerals.

*Branch
Railways.*

13. And whereas in many cases railways have been made to cross turnpike roads, highways, and private roads and tramways on the level, and the companies to whom such railways belong would in some cases be willing, at their own expense, to carry such roads and tramways over or under such railways by means of a bridge or archway for the greater safety of the public, but have no authority so to do : and whereas it would promote the public safety if railway companies were enabled, under the sanction and authority of the lords of the said committee, to substitute bridges or archways for such level crossings as aforesaid ; be it therefore enacted, That in all cases where any railway company shall be willing, at their own expense, to carry any turnpike road,

*Powers of
making, to
be regu-
lated by the
Board of
Trade.*

*Alteration
of level
crossings.*

*Board of
Trade may
authorize
company to
carry roads
over or
under rail-
way.*

Alteration of level crossings. — highway, or private road or tramway over or under their railway by means of a bridge or arch in lieu of crossing the same on the level, it shall be lawful for the lords of the said committee, on the application of the said company, and after hearing the several parties interested, if it shall appear to the lords of the said committee that such level crossing endangers the public safety, and that the proposal of the company does not involve any violation of existing rights or interests without adequate compensation, to give the said company full power and authority for removing the danger at their own expense, either by building a bridge, or by such other arrangement as the nature of the case shall require, subject to such conditions as the lords of the said committee shall direct.

Entry upon adjoining lands. — 14. And whereas it is essential for the public safety, and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power, in case of accidents or slips happening or being apprehended to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways, for the purpose of repairing or renewing the same, and to do such works as may be necessary for the purpose ; be it therefore enacted, That it shall be lawful for the lords of the said committee to empower any railway company, in case of any accident or slip happening or being apprehended to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose : provided always, that in case of necessity it shall be lawful for any railway company to enter upon such lands and do such works as aforesaid, without having obtained the previous sanction of the lords of the said committee ; but in every such case such railway company shall, within forty-eight hours after such entry, make a report to the lords of the said committee, specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the lords of the said committee shall, after considering the said report, certify that their exercise is not necessary for the public safety : provided also, that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible despatch ; and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works, the amount of which compensation, in case of any dispute about the same, shall

Board of Trade may authorize company to enter upon adjoining lands, to repair or prevent accidents.

Compensation to owners and occupiers.

be settled in the same manner as cases of disputed compensation are directed to be settled by the acts relating to the railway on which such works may become necessary : provided always, that no land shall be taken permanently by any railway company for such works without a certificate from the lords of the said committee as hereinafter described.

15. And whereas by various acts relating to railways compulsory powers are given to railway companies of purchasing and taking lands for the construction of such railways, and it is provided that such compulsory powers shall not be exercised after the expiration of certain limited periods from the passing of the said acts : and whereas it is sometimes found necessary for the public safety that additional land should be taken after the expiration of such periods for the purpose of giving increased width to the embankments and inclination to the slopes of railways, or for making approaches to bridges or archways, or for doing such works for the repair or prevention of accidents as are hereinbefore described ; be it therefore enacted, That, in every case in which the lords of the said committee shall certify that the public safety requires additional land to be taken by any railway company for such purposes as aforesaid, the compulsory powers of purchasing and taking land contained in the act or acts of such railway company, together with all the clauses and provisions relative thereto, shall, as regards such portion or portions of land as are mentioned in the certificate of the lords of the said committee, revive and be in full force for such further period as shall be mentioned in such certificate : provided always, that any railway company applying to the lords of the said committee for any such certificate applying to shall give fourteen days' notice in writing, in the manner prescribed by the act or acts of such company for serving notices on land owners, of their intention to make such application to all the parties interested in such lands, or to such of them as shall be known to the company, and shall state in such notice the particulars of the lands required ; and if any of such parties interested shall apply within the said period of fourteen days to the lords of the said committee, such party shall be heard by them before any such certificate is given : provided also, that where any such application shall have been made by any railway company to the lords of the said committee, upon which application any such certificate shall have been refused, the directors of such railway company shall, if required by the lords of the said committee, repay to the party resisting such application any expenses which he or they may have incurred in resisting such application.

*Entry upon
adjoining
lands.*

*Compulsory powers
of taking
land.*

*Board of
Trade may
extend the,
if thought
necessary
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*Company
to the lords of the said committee for any such certificate applying to
shall give fourteen days' notice in writing, in the manner Board of
prescribed by the act or acts of such company for serving Trade to
notices on land owners, of their intention to make such give notice
application to all the parties interested in such lands, or to owners,
such of them as shall be known to the company, and shall and state
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any such certificate shall have been refused, the directors
of such railway company shall, if required by the lords of
the said committee, repay to the party resisting such appli-
cation any expenses which he or they may have incurred
in resisting such application.*

Carriages.

Repeal of provisions restricting weight of carriages to four tons,

may be used of a greater weight.

Railway servants guilty of misconduct.

Punishment of persons employed on railways guilty of misconduct.

See 3 & 4 Vict. c. 97, s. 13 & 14.

16. And whereas by various acts relating to railways it is enacted, that no carriage or waggon shall carry or bear at any one time upon the railway (including the weight of such carriage) more than four tons, and experience has shown that it is in many cases more conducive to safety to use a heavier description of carriage or waggon upon railways than was originally contemplated ; be it therefore enacted, That every provision contained in any such act or acts respectively limiting the weight to be carried or borne at any one time in any carriage or waggon upon any railway (including the weight of such carriage or waggon) to four tons shall be and the same is hereby repealed, and that, notwithstanding any thing in any act contained, it shall be lawful for any railway company to use and to permit to be used upon any railway carriages or waggons carrying or bearing (including the weight of such carriage) a greater weight than four tons, subject to such regulations as may from time to time be made and be in force pursuant to any act or acts of parliament already or hereafter to be passed in that behalf.

17. And whereas by the said recited act for regulating railways provision is made for the punishment of servants of railway companies guilty of misconduct, and it is expedient to extend such provision ; be it enacted, That it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, waggon driver, guard, porter, servant, or other person employed by the said or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway, who shall commit any offence against any of the bye-laws, rules, or regulations of the said company, or who shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon such railway or the works thereof respectively shall be or might be injured or endangered, or whereby the passage of any engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such engine driver, guard, porter, servant, or other person so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act ; and every such person so offending, and every person counselling, aiding, or assisting therein, as aforesaid,

shall, when convicted upon the oath of one or more credible witness or witnesses before such justice as aforesaid, (who is hereby authorized and required, upon complaint to him made upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises,) in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour, as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint, such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

*Railway
servants
guilty of
misconduct.*

18. And be it enacted, That in all cases in which offence by the present or the said recited act for regulating railways it is provided that offenders shall be taken before one or more justices of the peace for the place within which the offence was committed, it shall be lawful, in case the offence is committed in Scotland, to take such offenders before the sheriff of the county, or other magistrate acting for the district within which such offence shall be committed, or where such offender shall be apprehended, without any warrant or authority other than this act; and such sheriff or magistrate is hereby empowered and required, on the application of the railway company, to proceed in all respects as if the words "sheriff or magistrate" had been substituted for the word "justice" in the said acts, and shall be entitled summarily, and without a jury, to execute the powers thereby and hereby committed to him.

19. And be it enacted, That all notices, returns, and other documents required by this act or by the said recited act to be given to or laid before the lords of the said committee shall be delivered at or sent by the post to the office of the lords of the said committee; and all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by one of the secretaries of the said committee, or by some officer appointed for that purpose by the lords of the said committee, and purporting to be made by the lords of the said committee, shall, for the purposes of this and of the said recited act, be deemed to have been made by the lords of the said committee, and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same or of the signature thereto;

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Service of notices,
—
on company.

and service of the same at one of the terminal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post addressed to him at such office, shall be deemed good service upon the said company.

Conveyance of military and police.
—
Amended by 7 & 8 Vict. c. 85, s. 12.

20. *And be it enacted, That whenever it shall be necessary to move any of the officers or soldiers of her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessities and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the secretary at war and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities.*

Interpretation of words.
—
“Railway.” “Company”

21. And be it enacted, That whenever the word “railway” is used in this or in the said recited act it shall be construed to apply to all railways used or intended to be used for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and whenever the word “company” is used in this or in the said recited act it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless, in either of the above cases, the subject or context be repugnant to such construction.

Application of penalties.
—
Application of penalties.

22. And be it enacted, That all penalties under this act, for the application of which no special provision is made, shall be recovered in the name and for the use of her Majesty, in the manner provided by the said recited act for regulating railways.

Act may be amended or repealed.
—
Act may be amended or repealed.

23. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of parliament.

7 & 8 Vict. cap. 85.

An Act to attach certain Conditions to the Construction of Future Railways, authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament; and for other purposes in relation to Railways.

[9th August, 1844.]

WHEREAS it is expedient that the concession of powers Preamble, for the establishment of new lines of railway should be subjected to such conditions as are hereinafter contained for the benefit of the public :

1. Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if at any time after the end of twenty-one years from and after the first day of January next after the passing of any act of the present or of any future session of parliament for the construction of any new line of passenger railway, whether tolls of such new line be a trunk, branch, or junction line, and future rail-whether such new line be constructed by a new company ways, and incorporated for the purpose or by any existing company, fix a new paid-up capital stock of the said railway, upon the average of the three then last preceding years, shall equal or exceed the rate of ten pounds for every hundred pounds of such paid-up capital stock, it shall be lawful for the lords commissioners of her Majesty's treasury, subject to the provisions hereinafter contained, upon giving to the said company three calendar months' notice in writing of their intention so to do, to revise the scale of tolls, fares, and charges limited by the act or acts relating to the said railway, and to fix such new scale of tolls, fares, and charges applicable to such different classes and kinds of passengers, goods, and other traffic on such railway, as in the judgment of the said lords commissioners, assuming the same quantities and kinds of traffic to continue, shall be likely to reduce the said divisible profits to the said rate of ten pounds in the hundred : provided always, that no such revised scale shall take effect, unless accompanied by a guarantee to subsist as long as any such revised scale of tolls, fares, and charges shall be in force, that the

Options of revision and purchase.

Treasury may revise the scale of tolls of

Proviso.

Options of revision and purchase.

said divisible profits, in case of any deficiency therein, shall be annually made good to the said rate of ten pounds for every hundred pounds of such capital stock: provided also, that such revised scale shall not be again revised or such guarantee withdrawn, otherwise than with the consent of the company, for the further period of twenty-one years.

Treasury may purchase future railways.

2. And be it enacted, That whatever may be the rate of divisible profits on any such railway, it shall be lawful for the said lords commissioners, if they shall think fit, subject to the provisions hereinafter contained, at any time after the expiration of the said term of twenty-one years, to purchase any such railway, with all its hereditaments, stock, and appurtenances, in the name and on behalf of her Majesty, upon giving to the said company three calendar months' notice in writing of their intention, and upon payment of a sum equal to twenty-five years' purchase of the said annual divisible profits, estimated on the average of the three then next preceding years: provided that if the average rate of profits for the said three years shall be less than the rate of ten pounds in the hundred, it shall be lawful for the company, if they shall be of opinion that the said rate of twenty-five years' purchase of the said average profits is an inadequate rate of purchase of such railway, reference being had to the prospects thereof, to require that it shall be left to arbitration, in case of difference, to determine what (if any) additional amount of purchase money shall be paid to the said company: provided also, that such option of purchase shall not be exercised, except with the consent of the company, while any such revised scale of tolls, fares, and charges shall be in force.

Proviso.

3. Provided always, and be it enacted, That the option of revision or purchase shall not be applied to any railway made or authorized to be made by any act previous to the present session; and that no branch or extension of less than five miles in length of any such line of railway shall be taken to be a new railway within the provisions of this act; and that the said option of purchase shall not be exercised as regards any branch or extension of any railway, without including such railway in the purchase, in case the proprietors thereof shall require that the same be so included.

Options not to be applied to existing railways.

3. Provided always, and be it enacted, That the option of revision or purchase shall not be applied to any railway made or authorized to be made by any act previous to the present session; and that no branch or extension of less than five miles in length of any such line of railway shall be taken to be a new railway within the provisions of this act; and that the said option of purchase shall not be exercised as regards any branch or extension of any railway, without including such railway in the purchase, in case the proprietors thereof shall require that the same be so included.

Options not to be exercised by treasury until authorized by parliament.

4. And whereas it is expedient that the policy of revision or purchase should in no manner be prejudged by the provisions of this act, but should remain for the future consideration of the legislature, upon grounds of general and national policy: and whereas it is not the intention of this act that under the said powers of revision or pur-

chase, if called into use, the public resources should be employed to sustain an undue competition against any independent company or companies; be it enacted, That no such notice as hereinbefore mentioned, whether of revision or purchase, shall be given until provision shall have been made by parliament, by an act or acts to be passed in that behalf, for authorizing the guarantee or the levy of the purchase money hereinbefore mentioned, as the case may be, and for determining, subject to the conditions hereinbefore mentioned, the manner in which the said options or either of them shall be exercised; and that no bill for giving powers to exercise the said options, or either of them, shall be received in either house of parliament unless it be recited in the preamble to such bill that three months' notice of the intention to apply to parliament for such powers has been given by the said lords commissioners to the company or companies to be affected thereby.

5. And be it enacted, That, from and after the commencement of the period of three years next preceding the period at which the option of revision or purchase becomes available, full and true accounts shall be kept of all sums of money received and paid on account of any railway within the provisions hereinbefore contained, (distinguishing, if the said railway shall be a branch railway or one worked in common with other railways, the receipts, and giving an estimate of the expenses on account of the said railway, from those on account of the trunk, line, or other railways,) by the directors of the company to whom such railway belongs or by whom the same may be worked; and every such railway company shall once in every half year, during the said period of three years, cause a half-yearly account in abstract to be prepared, showing the total receipt and expenditure on account of the said railway for the half-year ending the thirtieth day of June and the thirty-first day of December respectively, or such other convenient days as shall in each case be directed by the said lords commissioners, under distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified under the hands of two or more directors of the said railway company, and shall send a copy of the said account to the said lords commissioners on or before the last days of August and February respectively, or such other days as shall in each case be directed by the said lords commissioners, in each year; and it shall be lawful for the said lords commissioners, if and when they shall think fit, to appoint any proper person or persons to inspect the accounts and books of the said company during the said

Options of
revision
and pur-
chase.

Companies
liable to the
counts and
send copy
of balance-
sheet to the
Treasury.

Options of revision and purchase. — period of three years ; and it shall be lawful for any person so authorized, at all reasonable times, upon producing his authority, to examine the books, accounts, vouchers, and other documents of the company at the principal office or place of business of the company, and to take copies or extracts therefrom.

Cheap Trains. —

Company to provide one cheap train each way daily. — protected from the weather ; be it enacted, That on and after the several days hereinafter specified all passenger railway companies which shall have been incorporated by any act of the present session, or which shall be hereafter incorporated, or which by any act of the present or any future session have obtained or shall obtain, directly or indirectly, any extension or amendment of the powers conferred on them respectively by their previous acts, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts, shall, by means of one train at the least to travel along their railway from one end to the other of each trunk, branch, or junction line belonging to or leased by them, so long as they shall continue to carry other passengers over such trunk, branch, or junction line, once at the least each way on every week-day, except Christmas-day and Good Friday (such exception not to extend to Scotland), provide for the conveyance of third-class passengers to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several acts of parliament, and with the immunities applicable by law to carriers of passengers by railway ; and also under the following conditions ; (that is to say.)

Hours of starting.

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the lords of the committee of privy council for trade and plantations :

Rate of speed.

Such train shall travel at an average rate of speed not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages :

Stoppages.

Such train shall, if required, take up and set down passengers at every passenger station which it shall pass on the line :

Carriages.

The carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather, in a manner satisfactory to the lords of the said committee :

Fares.

The fare or charge for each third-class passenger by such train shall not exceed one penny for each mile travelled :

Each passenger by such train shall be allowed to take *Cheap Trains.*
with him half a hundred weight of luggage, not being
merchandise or other articles carried for hire or pro-
fit, without extra charge ; and any excess of luggage *Luggage.*
shall be charged by weight, at a rate not exceeding
the lowest rate of charge for passengers' luggage by
other trains :

Children under three years of age accompanying pas- *Children.*
sengers by such train shall be taken without any
charge, and children of three years and upwards, but
under twelve years of age, at half the charge for an
adult passenger :

And with respect to all railways subject to these obliga- When these
tions which shall be open on or before the first day of obligations
November next, these obligations shall come into force on to com-
the said first day of November ; and with respect to all mence.
other railways subject to these obligations, they shall
come into force on the day of opening of the railway, or
the day after the last day of the session in which the act
shall be passed by reason of which the company will be-
come subject thereunto, which shall first happen.

7. And be it enacted, That if any railway company *Penalty for*
shall refuse or wilfully neglect to comply with the pro- non-com-
visions of this act as to the said cheap trains within a pliance.
reasonable time, or shall attempt to evade the operation of
such order, such company shall forfeit to her Majesty a
sum not exceeding twenty pounds for every day during
which such refusal, neglect, or evasion shall continue.

8. Provided always, and be it enacted, That, except as Board of
to the amount of fare or charge for each passenger by such Trade may
cheap trains, which shall in no case exceed the rates here- dispense
inbefore in such case provided, the lords of the said com- with condi-
mittee shall have a discretionary power, upon the applica- tions here-
tion of any railway company, of dispensing with any of inbefore
the conditions hereinbefore required in regard to the required in
conveyance of passengers by such cheap trains as afore- considera-
said, in consideration of such other arrangements, either tion of other
in regard to speed, covering from the weather, seats, or arrange-
other particulars, as to the lords of the said committee ments more
shall appear more beneficial and convenient for the pas- beneficial.
sengers by such cheap trains under the circumstances of
the case, and shall be sanctioned by them accordingly ;
and any railway company which shall conform to such
other conditions as shall be so sanctioned by the lords of
the said committee shall not be liable to any penalty for not
observing the conditions which shall have been so dispensed
with by the lords of the said committee in regard to the
said cheap trains and the passengers conveyed thereby.

9. And be it enacted, That no tax shall be levied upon No passen-

ger tax to the receipts of any railway company from the conveyance of passengers at fares not exceeding one penny for each mile by any such cheap train as aforesaid.

If company run trains on Sundays, cheap trains to be likewise provided.

10. And be it enacted, That whenever any railway company subject to the hereinbefore mentioned obligation of running cheap trains shall, from and after the days hereinbefore specified on which the said obligation is to accrue, run any train or trains on Sundays for the conveyance of passengers, it shall, under the obligations contained in its act or acts of parliament, and with the immunities applicable by law to carriers of passengers by railway, by such train each way, on every Sunday, as shall stop at the greatest number of stations, provide sufficient carriages for the conveyance of third class passengers at the terminal and other stations at which such Sunday train may ordinarily stop; and the fare or charge for each third class passenger by such train shall not exceed one penny for each mile travelled.

Conveyance of mails.

See 1 & 2 Vict. c. 98.

11. And whereas by an act passed in the second year of the reign of her Majesty, intituled "An act to provide for the conveyance of the Mails by Railways," provision was made for the transmission of the mails by railway, and it is expedient that such provision should be extended, be it enacted, That it shall be lawful for the Postmaster-General to require, in the manner and subject to the conditions as to payment for service performed prescribed by the said act, that the mails be forwarded upon any such railway as is hereinbefore last mentioned at any rate of speed which the inspector-general of railways for the time being shall certify to be safe, not exceeding twenty-seven miles in the hour including stoppages; and it shall be also lawful for the Postmaster-General to send any mail guard

Mails by trains other than a mail train.

with bags not exceeding the weight of luggage allowed to any other passenger (or subject to the general rules of the company for any excess of that weight) by any trains other than a mail train, upon the same conditions as any other passenger; provided that in such last-mentioned case nothing herein or in the last-recited act contained shall be construed to authorize the Postmaster-General to require the conversion of a regular mail train into an ordinary train, or to exercise any control over the company in respect of any ordinary train, nor shall the company be responsible for the safe custody or delivery of any mail bags so sent.

Conveyance of military & police.

12. And whereas by an act passed in the sixth year of the reign of her Majesty, intituled "An Act for the better regulation of Railways, and for the conveyance of Troops," it was among other things enacted, that whenever it shall be necessary to move any of the officers or soldiers of her

Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the secretary at war and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities : and whereas it is expedient to amend such Prices and provision in regard to the prices and conditions of conveyance by any new railway or any railway obtaining new of conveyance powers from parliament ; be it enacted, That all railway companies which have been or shall be incorporated by any act of the present or any future session, or which, by any act of the present or any future session shall have obtained or shall obtain any extension or amendment of the powers conferred by their previous acts or any of them, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding twopence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first-class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the militia or police force, and also for each wife, widow, or child above twelve years of age of a soldier entitled by act of parliament or by competent authority to be sent to their destination at the public expense, children under three years of age so entitled being taken free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult ; and such soldiers, marines, and privates of the militia or police force, and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons with seats conveyed, and which shall be protected against the weather ; provided that every officer conveyed shall be entitled to take with him one hundred weight of personal luggage without extra charge, and every soldier, marine, private, wife, or widow shall be entitled to take with him or her half a hundred weight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms ammunition, and other necessaries and things, (except

*Conveyance of
military
and police.*

See 5 & 6
Vict. c. 55,
s. 20.

Conveyance of military and police. — gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the secretary at war and the company,) shall be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods.

Electrical Telegraphs. — 13. And whereas electrical telegraphs have been established on certain railways, and may be more extensively established hereafter, and it is expedient to provide for their due regulation ; be it enacted, That every railway company, on being required so to do by the lords of the said committee, shall be bound to allow any person or persons authorized by the lords of the said committee, with servants and workmen, at all reasonable times to enter into or upon their lands, and to establish and lay down upon such lands adjoining the line of such railway a line of electrical telegraph for her Majesty's service, and to give to him and them every reasonable facility for laying down the same, and for using the same for the purpose of receiving and sending messages on her Majesty's service, subject to such reasonable remuneration to the company as may be agreed upon between the company and the lords of the said committee, or, in case of disagreement, as may be settled by arbitration : provided always, that, subject to a prior right of use thereof for the purposes of her Majesty, such telegraph may be used by the company for the purposes of the railway, upon such terms as may be agreed upon between the parties, or, in the event of difference, as may be settled by arbitration.

Lines established by private parties to be open to the public. 14. And be it enacted, That where a line of electrical telegraph shall have been established upon any railway by the company to whom such railway belongs, or by any company, partnership, person or persons, otherwise than exclusively for her Majesty's service, or exclusively for the purposes of the railway, or jointly for both, the use of such electrical telegraph, for the purpose of receiving and sending messages, shall, subject to the prior right of use thereof for the service of her Majesty and for the purposes of the company, and subject also to such equal charges and to such reasonable regulations as may be from time to time made by the said railway company, be open for the sending and receiving of messages by all persons alike, without favour or preference.

Inspectors of railways. 15. And whereas by an act passed in the fourth year of the reign of her Majesty, intituled "An Act to regulate Railways," power is given to the lords of the said committee to appoint any proper person or persons to inspect any

railway, and the stations, works, and buildings, and the *Inspectors of railways.*
engines and carriages belonging thereto; and in order to carry the provisions of this act into execution it is expedient that the said power be extended; be it enacted, That the said power given to the lords of the said committee of appointing proper persons to inspect railways shall extend to authorize the appointment by the lords of the said committee of any proper person or persons, for such purposes of inspection as are by the said act authorized, and also for the purpose of enabling the lords of the said committee to carry the provisions of this and of the Board of said act, and of any general act relating to railways, into execution; and that so much of the last-recited act as provides that no person shall be eligible to the appointment as inspector who shall, within one year of his appointment, have been a director, or have held any office of trust or profit under any railway company, shall be repealed: provided always, that no person to be appointed as aforesaid shall exercise any powers of interference in the affairs of the company.

16. And whereas by the said act of the fourth year of the reign of her Majesty, intituled "An Act for regulating Railways," it is among other things enacted, that whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of parliament regulating any railway companies, or the provisions of that act, have not been complied with on the part of any of the said companies or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the lords of the said committee shall certify the same to her Majesty's attorney-general for England or Ireland, or to the lord-advocate for Scotland, as the case may require; and thereupon the said attorney-general or lord-advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding (as the case may require), proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts; provided always, that no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same: and whereas it is expedient that more effectual provision should be made, not only for enforcing a compliance on the part of railway companies with the provisions of their acts, but also for restraining

See 3 & 4 Vict. c. 97, s. 5.
Extension of power of appointment of ment of, by Board of Trade.

Prosecutions to enforce provisions of railway acts.

Repeal of 3 & 4 Vict. c. 97, s. 11.

Prosecutions to enforce provisions of railway acts, *railway companies from performing acts unauthorized by such provisions;* be it enacted, That so much of the said act as is hereinbefore recited shall be repealed.

may be directed by the Board of Trade,

in cases of non-compliance with provisions of acts.

In cases of commission of acts unauthorized by law. 17. And be it enacted, that whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of parliament regulating any railway company, or the provisions of this act or of any general act relating to railways, have not been complied with on the part of any railway company or any of its officers, or that any railway company has acted or is acting in a manner unauthorized by the provisions of the act or acts of parliament relating to such railway, or in excess of the powers given and objects defined by the said act or acts, and it shall also appear to the lords of the said committee that it would be for the public advantage that the company should be restrained from so acting, the lords of the said committee shall certify the same to her Majesty's attorney-general for England or Ireland, or to the lord-advocate for Scotland, as the case may require; and thereupon the said attorney-general or lord-advocate shall, in case such default of the railway company shall consist of non-compliance with the provisions of the act or acts relating thereto, or of this act, or of any general act relating to railways, proceed by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts; and in case the default of the railway company shall consist in the commission of some act or acts unauthorized by law, then the said attorney-general or lord-advocate, upon receiving such certificate as aforesaid, shall proceed by suit in equity, or such other legal proceeding as the nature of the case may require, to obtain an injunction or order (which the judge in equity or other judge to whom the application is made shall be authorized and required to grant, if he shall be of opinion that the act or acts of the railway company complained of is or are not authorized by law,) to restrain the company from acting in such illegal manner, or to give such other relief as the nature of the case may require.

Notice of, to be given to the company. 18. Provided always, and be it enacted, That no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice to the company against or in relation to whom they shall intend to give such certificate of their intention to give such certificate; and that no legal pro-

ceedings shall be commenced under the authority of the Prosecutors to be lords of the said committee against any railway company for any offence against any of the several acts relating to railways, or this act, or any general act relating to railways, except upon such certificate of the lords of the said committee as aforesaid, and within one year after such offence shall have been committed.

19. And whereas many railway companies have borrowed money in a manner unauthorized by their acts of incorporation or other acts of parliament relating to the said companies, upon the security of loan notes or other instruments purporting to give a security for the repayment of the principal sums borrowed at certain dates, and for the payment of interest thereon in the meantime: and whereas such loan notes or other securities issued otherwise than under the provision of some act or acts of parliament have no legal validity, and it is expedient that the issue of such illegal securities should be stopped; but such loan notes or other securities having been issued and received in good faith as between the borrower and lender, and for the most part for the lawful purposes of the undertaking, and in ignorance of their legal invalidity, it is expedient to confirm such as have been already issued; be it enacted, That from and after the passing of this act Issue of, any railway company issuing any loan note or other prohibited negotiable or assignable instrument purporting to bind in future the company as a legal security for money advanced to the said railway company otherwise than under the provisions of some act or acts of parliament authorizing the said railway company to raise such money and to issue such security, shall for every such offence forfeit to her Majesty a sum equal to the sum for which such loan note or other instrument purports to be such security: provided always, that any company may renew any such issued may loan note or other instrument issued by them prior to the be renewed. passing of this act for any period or periods not exceeding five years from the passing of this act.

20. And be it enacted, That where any railway company before the twelfth day of July one thousand eight hundred and forty-four, shall have issued or contracted to issue any such loan notes or other unauthorized instruments, the company may and shall pay off such loan notes or other instruments as the same may fall due, subject as hereinbefore provided; and until the same shall be so paid off the said loan notes or other instruments shall entitle the holders thereof to the payment by the company of the principal sum and interest thereby agreed to be paid.

21. And be it enacted, That a register of all such loan notes or other instruments shall be kept by the secretary; to be kept.

LoanNotes. and such register shall be open, without fee or reward, at all reasonable times, to the inspection of any shareholder or auditor of the undertaking, and of every person interested in any such loan note or other instrument, desirous of inspecting the same.

Tithe Rent. 22. And whereas the remedies now in force for the recovery of tithe commutation rent-charges are in many instances ineffectual for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to extend the said remedies when the said rent-charges may have been duly apportioned ; be it enacted, That in all cases in which any such rent-charge, or part of any rent-charge, has been or hereafter shall be duly apportioned under the provisions of the acts for the commutation of tithes in England and Wales, upon lands taken or purchased by any railway company for the purposes of such company, or upon any part of such lands, it shall be lawful for every person entitled to the said rent-charge or parts of such rent-charge, in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels, and effects of the said company, whether on the land charged therewith, or any other lands, premises, or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years : provided always, that nothing herein contained shall give or be construed to give a legal right to such rent-charge, when but for this act such rent-charge was not or could not be duly apportioned.

Proviso.

Service of notices, 23. And be it enacted, That all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by some officer appointed for that purpose by the lords of the said committee, shall for the purposes of this act be deemed to have been made by the lords of the said committee ; and all certificates of any thing done by the lords of the said committee in relation to this act, and certified copies of the minutes of proceedings or correspondence of the lords of the said committee in relation thereto, signed by such officer, shall be deemed sufficient evidence thereof, and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same or of the signature thereto, and service of the same at one of the principal offices of any railway company on the secretary or clerk of the said company, or by sending the same

*on com-
pany.*

by post, addressed to him at such office, shall be deemed *Service of notices.*
good service upon the said company; and all notices, returns, and other documents required by this act to be given to or laid before the lords of the said committee, shall be delivered at or sent by post addressed to the office of the lords of the said committee.

24. And be it enacted, That all penalties under this act for the application of which no special provision is made shall be recovered in the name and for the use of her Majesty, and may be recovered in any of her Majesty's courts of record, or in the court of session or in any of the sheriff courts in Scotland.

Recovery of penalties.

25. And be it enacted, That where the word "railway" is used in this act it shall be construed to extend to railways constructed under the powers of any act of parliament; and when the words "passenger railway" are used in this act, they shall be construed to extend to railways constructed under the powers of any act of parliament upon which one-third or more of the gross annual revenue is derived from the conveyance of passengers by steam or other mechanical power; and whenever the word "company" is used in this act it shall be construed to extend to include the proprietors for the time being of any such railway; and that where a different sense is not expressly declared, or does not appear by the context, every word importing the singular number or the masculine gender shall be taken to include females as well as males, and several persons and things as well as one person or thing.

Interpretation of words.

"Railway."
"Passenger Railway."

"Company"

26. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

Act may be amended or repealed.

8 VICT. cap. 17.

An Act for consolidating in One Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a Public Nature in Scotland. [8th May 1845.]

WHEREAS it is expedient to comprise in one general Preamble. act sundry provisions relating to the constitution and management of joint stock companies, usually introduced into acts of parliament authorizing the execution of undertakings of a public nature by such companies in Scotland,

Preamble. and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves,

Act to apply to all companies incorporated by acts hereafter to be passed.

1. Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every joint stock company in Scotland which shall by any act of Parliament which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be varied or excepted by any such act, shall apply to the company which shall be incorporated by any act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such enactments and provisions, as well as the enactments and provisions of every other act which shall be incorporated with such act, shall, save as aforesaid, form part of such act, and be construed together therewith as forming one act.

Interpretations in this act.

2. And with respect to the construction of this act, and of other acts to be incorporated therewith, be it enacted as follows:—

"The special act."

The expression "the special act" used in this act shall be construed to mean any act which shall be hereafter passed incorporating or constituting a joint stock company for the purpose of carrying on any undertaking, and with which this act shall be so incorporated as aforesaid; and the word "prescribed" used in this act, in reference to any matter herein stated, shall be construed to refer to such matter as shall be prescribed or provided for in the special act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature, which shall by the special act be authorized to be executed.

"The undertaking."

3. The following words and expressions both in this and the special act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,) —

Number.

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number:

Words importing the masculine gender only shall Gender. include females:

The word "lands" shall extend to houses, lands, tenements, and heritages of any description or tenure:

The word "lease" shall include a missive or an agreement "Lease." for a lease:

The word "month" shall mean calendar month: "Month."

The "lord-ordinary" shall mean the lord-ordinary of "Lord-Or- the court of session in Scotland officiating on the bills dinary." in time of vacation, or the junior lord-ordinary, if in time of session, as the case may be:

The word "sheriff" shall include the sheriff substitute: "Sheriff."

The word "oath" shall include affirmation in the case "Oath." of quakers, or other declaration lawfully substituted for an oath in the case of any other persons, exempted by law from the necessity of taking an oath:

The word "county" shall include any ward or other "County." like division of a county:

The word "justice" shall mean justice of the peace "Justice." acting for the county, city, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where any matter shall be authorized or required to be done by two justices the expression "two justices" "Two jus- sembled and acting together:

The expression "the company" shall mean the company "The com- constituted by the special act: pany."

The expression "the directors" shall mean the directors "Directors" of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of manage- ment, or under any other name:

The word "shareholder" shall mean shareholder, proprie- "Share- tor, or member of the company; and in referring holder." to any such shareholder, expressions properly appli- cable to a person shall be held to apply to a corpora- tion: and

The expression "the secretary" shall mean the secretary "Secre- of the company, and shall include the word "clerk." tary."

4. And be it enacted, That in citing this act in other acts of parliament and in legal instruments it shall be suf- ficient to use the expression "The Companies' Clauses Consolidation (Scotland) Act, 1845."

5. And whereas it may be convenient in some cases to incorporate with acts hereafter to be passed some portion which por- only of the provisions of this act; be it therefore en- acted, That for the purpose of making any such incor- poration it shall be sufficient in any such act to enact incorpo-

rated with other acts. that the clauses and provisions of this act, with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter), shall be incorporated with such act; and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

Distribution of capital. And with respect to the distribution of the capital of the company into shares, be it enacted as follows:

Capital to be divided into shares. 6. The capital of the company shall be divided into shares of the prescribed number and amount; and such shares shall be numbered in arithmetical progression, beginning with number one; and every such share shall be distinguished by its appropriate number.

Shares to be personal estate. 7. All shares in the undertaking shall be personal estate, and transmissible as such, and shall not be of the nature of real estate.

Persons who subscribe to be shareholders. 8. Every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered on the register of shareholders hereinafter mentioned, shall be deemed a shareholder of the company and shall be entitled to have one share therein allotted to him in respect of every sum of the prescribed amount so subscribed by him.

Register of shareholders to be kept, and authenticated. 9. The company shall keep a book, to be called the "register of shareholders;" and in such book shall be fairly and distinctly entered, from time to time, the names of the several corporations, and the names and additions of the several persons entitled to shares in the company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares, and the surnames or corporate names of the said shareholders shall be placed in alphabetical order; and such book shall be authenticated by the common seal of the company being affixed thereto; and such authentication shall take place at the first ordinary meeting, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company.

Shareholders' address-book to be kept; 10. In addition to the said register of shareholders, the company shall provide a book, to be called the "shareholders' address-book," in which the secretary shall from time to time enter, in alphabetical order, the corporate

names and places of business of the several shareholders *Distribu-*
of the company, being corporations, and the surnames of
the several other shareholders with their respective
christian names, places of abode, and descriptions, so far
as the same shall be known to the company; and every
shareholder, or if such shareholder be a corporation the
clerk or agent of such corporation, may at all convenient times peruse such book gratis, and may require a copy perused and thereof or of any part thereof; and for every hundred words so required to be copied, the company may demand a sum not exceeding sixpence.

11. On demand of the holder of any share the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder; and such certificate shall have the common seal of the company affixed thereto; and such certificate shall specify the share in the undertaking to which such shareholder is entitled; and the same may be according to the form in the schedule (A.) to this act annexed, or to the like effect; and for such certificate the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

12. The said certificate shall be admitted in all courts as *prima facie* evidence of the title of such shareholder, to be evidenced by his executors, administrators, successors, or assigns, to the share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.

13. If any such certificate be worn out or damaged, then, upon the same being produced at some meeting of the directors, such directors may order the same to be cancelled, and thereupon another similar certificate shall be given to the party in whom the property of such certificate, and of the share therein mentioned, shall be at the time vested; or if such certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, a similar certificate shall be given to the party entitled to the certificate so lost or destroyed; and in either case a due entry of the substituted certificate shall be made by the secretary in the register of shareholders; and for every share such certificate so given or exchanged the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

And with respect to the transfer or transmission of shares, be it enacted as follows:

14. Subject to the regulations herein or in the special act contained, every shareholder may sell and transfer all shares.

transfer
shares by
deed.

Form.

Transfers
of shares
may be ex-
ecuted ac-
cording to
the form
used in
England or
Scotland.

or any of his shares in the undertaking, or all or any part of his interest in the capital stock of the company, in case such shares shall, under the provisions hereinafter contained, be consolidated into capital stock ; and every such transfer shall be by deed duly stamped, in which the consideration shall be truly stated ; and such deed may be according to the form in the schedule (B.) to this act annexed, or to the like effect.

15. Whereas there may be hereafter many shareholders of the company who reside in England, and sales of shares are frequently made by persons in England to persons in Scotland, and vice versa, and it would be attended with inconvenience if all transfers of shares were required to be executed according to the forms of the law of Scotland ; all transfers of shares of the said company shall be valid and effectual if executed according to the usual mode of executing such instruments either in England or Scotland, or partly according to the one and partly according to the other.

Memorials
of transfers
to be enter-
red in regis-
ter of trans-
fers.

16. The said deed of transfer (when duly executed) shall be delivered to the secretary, and be kept by him ; and the secretary shall enter a memorial thereof in a book to be called the " Register of Transfers," and shall endorse such entry on the deed of transfer, and shall, on demand, deliver a new certificate to the purchaser ; and for every such entry, and endorsement and certificate, the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence ; and on the request of the purchaser of any share an endorsement of such transfer shall be made on the certificate of such share, instead of a new certificate being granted ; and such endorsement, being signed by the secretary, shall be considered in every respect the same as a new certificate ; and until such transfer has been so delivered to the secretary as aforesaid the vendor of the share shall continue liable to the company for any calls that may be made upon such share, and the purchaser of the share shall not be entitled to receive any share of the profits of the undertaking, or to vote in respect of such share.

Fee.
Until regis-
tered, ven-
dor liable
for calls.
Purchaser
not entitled
to profits.

17. No shareholder shall be entitled to transfer any share, after any call shall have been made in respect thereof, until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him.

Transfer
not to be
made until
calls paid.
Closing of
transfer
books.

18. It shall be lawful for the directors to close the register of transfers for the prescribed period, or if no period be prescribed, then for a period not exceeding four-

teen days previous to each ordinary meeting, and they *Transfer of shares.*
may fix a day for the closing of the same, of which seven
days' notice shall be given by advertisement in some
newspaper as after mentioned; and any transfer made
during the time when the transfer books are so closed
shall, as between the company and the party claiming
under the same, but not otherwise, be considered as made
subsequently to such ordinary meeting.

19. If the interest in any share have become transmitted *Transmission of shares.*
in consequence of the death or bankruptcy or insolvency
of any shareholder, or in consequence of the marriage of shares by
a female shareholder, or by any other lawful means than othermeans
by a transfer according to the provisions of this or the *than trans-*
special act, such transmission shall be authenticated by a *fer to be authenti-*
declaration in writing as hereinafter mentioned, or in such *cated by a declaration.*
other manner as the directors shall require; and every
such declaration shall state the manner in which and the
party to whom such share shall have been so transmitted,
and shall be made and signed by some credible person
before a sheriff or justice, and such declaration shall be
left with the secretary, and thereupon he shall enter the *Entry in name of the person entitled under such transmission in the register of*
register of shareholders; and for every such entry the share-
company may demand any sum not exceeding the pre- *holders.*
scribed amount, and where no amount shall be prescribed
then not exceeding five shillings; and until such trans- *Until au-*
mission has been so authenticated no person claiming by *thenticated*
virtue of any such transmission shall be entitled to receive not entitled
any share of the profits of the undertaking, nor to vote in to profits.
respect of any such share as the holder thereof.

20. If such transmission be by virtue of the marriage *Transmission of shares.*
of a female shareholder, the said declaration shall contain *sion by mar-*
a copy of the register of such marriage, or other particulars *riage, will,*
of the celebration or effecting thereof, and shall declare the &c., to be
identity of the wife with the holder of such share; and proved by
if such transmission have taken place by virtue of any tes- *production*
tamentary instrument, or by intestacy, the probate of the *of register*
will or the letters of administration, or an official extract *or probate.*
therefrom, obtained from any prerogative court if granted
in England, or a testamentary or testament
dative if expedite in Scotland or an official extract thereof,
shall, together with such declaration, be produced to the
secretary; and upon such production in either of the *Entry in*
cases aforesaid the secretary shall make an entry of the register of
declaration in the said register of transfers. *transfers.*

21. The company shall not be bound to see to the exe- *Company*
cution of any trust, whether express, implied, or construc- *not bound*
tive, to which any of the said shares may be subject; and to regard
the receipt of the party in whose name any such share *trusts.*

Transfer of shares. shall stand in the books of the company, or if it stands in the names of more parties than one, the receipt of the party first named in the register of shareholders and then surviving, shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trust to which such share may then be subject, and whether or not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt.

Receipt of party named in register of shareholders a sufficient discharge. — And with respect to the payment of subscriptions and the means of enforcing the payment of calls, be it enacted as follows :

Subscriptions to be paid when called for.

22. The several persons who have subscribed any money towards the undertaking, or their legal representatives, respectively, shall pay the sums respectively so subscribed, or such portions thereof as shall from time to time be called for by the company, at such times and places as shall be appointed by the company; and with respect to the provisions herein or in the special act contained for enforcing the payment of calls, the word "shareholder" shall extend to and include the legal personal representatives of such shareholder.

Power to make calls.

23. It shall be lawful for the company from time to time to make such calls of money upon the respective shareholders, in respect of the amount of capital respectively subscribed or owing by them, as they shall think fit,

Notice.

provided that twenty-one days' notice at the least be given of each call, and that no call exceed the prescribed amount, if any, and that successive calls be not made at less than the prescribed interval, if any, and that the aggregate

Interval.
Prescribed amount.

amount of calls made in any one year do not exceed the prescribed amount, if any; and every shareholder shall be liable to pay the amount of the calls so made, in respect of the shares held by him, to the persons and at the times and places from time to time appointed by the company.

Interest to be paid on calls unpaid.

24. If, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate allowed by law from the day appointed for the payment thereof to the time of the actual payment.

Interest may be allowed on payment before call.

25. It shall be lawful for the company, if they think fit, to receive from any of the shareholders willing to advance the same all or any part of the monies due upon their respective shares beyond the sums actually called for; and upon the principal monies so paid in advance, or so much thereof as from time to time shall exceed the

amount of the calls then made upon the shares in respect *Payment of calls.* of which such advance shall be made, the company may pay interest at such rate, not exceeding the legal rate of interest for the time being, as the shareholder paying such sum in advance and the company shall agree upon.

26. If at the time appointed by the company for the payment of payment of any call any shareholder fail to pay the calls may amount of such call, it shall be lawful for the company to be enforced sue such shareholder for the amount thereof, in any court of law or equity having competent jurisdiction, and to recover the same, with lawful interest, from the day on which such call was payable.

27. In any action or suit to be brought by the company Declaration against any shareholder to recover any money due for any in action call it shall not be necessary to set forth the special matter, for calls. but it shall be sufficient for the company to aver that the defender is the holder of one share or more in the company (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or more (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this and the special act.

28. On the trial or hearing of such action or suit it shall be sufficient to prove that the defender at the time of making such call was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as is directed by this or the special act; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other matter whatsoever; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period.

29. The production of the register of shareholders shall be evidence *primâ facie* evidence of such defender being a shareholder, and of the number and amount of his shares.

And with respect to the forfeiture of shares for non-payment of calls, be it enacted as follows : *Forfeiture of shares.*

30. If any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors at any time after the expiration of two months from the day appointed for payment may be declared for forfeited.

Forfeiture of shares.

of such call, may declare the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call or not.

Notice of forfeiture to be given before declaration thereof.

31. Before declaring any share forfeited the directors shall cause notice of such intention to be left at or transmitted by the post to the usual or last place of abode of the person appearing by the register of shareholders to be the proprietor of such share; and if the holder of any such share be abroad, or if his usual or last place of abode be not known to the directors, by reason of its being imperfectly described in the shareholders' address book, or otherwise, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as hereinbefore mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted, or may for the time being belong, shall not be known to the directors, the directors shall give public notice of such intention in the *Edinburgh Gazette*, and also in some newspaper, as after mentioned; and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

Declaration of forfeiture to be confirmed by a general meeting.

32. The said declaration of forfeiture shall not take effect so as to authorize the sale or other disposition of any share until such declaration have been confirmed at some general meeting of the company to be held after the expiration of two months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and by an order at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of.

When declaration confirmed, forfeited shares may be sold.

33. After such confirmation as aforesaid it shall be lawful for the directors to sell the forfeited share, either by public auction or private contract, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold.

Evidence as to forfeiture of shares.

34. A declaration in writing, by some credible person not interested in the matter, made before any sheriff or justice, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner hereinbefore required, shall be sufficient evidence of the facts therein stated;

Declaration and receipt of the treasurer of the company for the price of such share.

and such declaration, and the receipt of the treasurer of the company for the price of such share, shall consti-

tute a good title to such share ; and a certificate of proprietorship shall be delivered to such purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase ; and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

35. The company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture ; and if the money produced by the sale of any such forfeited shares be more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter.

36. If payment of such arrears of calls and interest and expenses be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid.

37. If the said company shall be incorporated, no person or corporation, nor the estate, real or personal, of any such person or corporation, who is or shall be a proprietor of the said incorporated company, shall be liable for or charged with the payment of any debt or demand whatsoever due or to become due by or from the said company beyond the extent of his or their share in the capital of the said company.

And with respect to the remedies of creditors of the company against the shareholders, be it enacted as follows

38. If any legal diligence or execution shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy under such diligence or execution, then such diligence or execution may be used against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up ; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

39. If by means of any such diligence or execution any Reimburse-

ment of
sharehold-
ers.

shareholder shall have paid any sum of money beyond the amount then due from him in respect of calls, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company.

*Borrowing
of money.*

And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows :

—
Company
may borrow
such sums
as shall be
authorized
by a general
meeting.

40. If the company be authorized by the special act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special act, to borrow on mortgage or bond such sums of money as shall, from time to time, by an order of a general meeting of the company, be authorized to be borrowed, not exceeding in the whole the sum prescribed by the special act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

If borrowed
money be
repaid, com-
pany may
again bor-
row.

41. If, after having borrowed any part of the money so authorized to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time ; but such power of re-borrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so re-borrowed in order to pay off any existing bond or security.

Evidence of
authority
for borrow-
ing.

42. Where by the special act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special act the authority of a general meeting is required for such borrowing, the certificate of a sheriff that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorizing the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made ; and upon production to any sheriff of the books of the company, and of such other evidence as he shall think sufficient such sheriff shall grant the certificate as aforesaid.

Mortgages
and bonds
to be by
deed.

Form.

43. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated ; and every such mortgage deed or bond may be according to the form in the schedule (C.) or (D.) to this act annexed, or to the like effect, and every such mortgage deed shall have the full effect of an assignation in security duly completed.

44. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorized.

45. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so not to be provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company.

46. All mortgages and money lent on mortgage to the company shall be personal estate, and transmissible as such, personal and shall not be of the nature of real estate.

47. The respective obligees in such bonds shall, proportionally according to the amount of the monies secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums proportion in such bonds mentioned, and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorized, or otherwise howsoever.

48. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and to be kept the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such register; and such register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward.

49. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest of mortgagess and therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration to be truly stated; and every such transfer may be by deed according to the form in the schedule (E.) to this act annexed, or to the like effect.

50. Within thirty days after the date of every such transfer, if executed within the united kingdom, or otherwise within thirty days after the arrival thereof in the united kingdom, it shall be produced to the secretary, and to be registered.

Borrowing thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage ; and after such entry every such transfer

shall entitle the transferee to the full benefit of the original mortgage or bond in all respects ; and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured ; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence ; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

Fee.
Payment of
interest on
monies bor-
rowed.

51. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company.

*Transfers
of interest.*

52. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped.

*Money bor-
rowed to be
repaid at
time fixed.*

53. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond ; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond ; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company.

*If no time
fixed, money
borrowed to
be repaid
at six
months'*

54. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose ; and in the like case the company may at any time pay off the money borrowed, on giving the like notice ; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by

*Notice to
company.*

*Notice by
company.*

advertisement in the Edinburgh Gazette, and in some *Borrowing of money*. newspaper as after mentioned.

55. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

56. Where by the special act the mortgagees of the company shall be empowered to enforce the payment of interest, the arrears of interest, or the arrears of principal and when to be interest, due on such mortgages, by the appointment of a judicial factor, then, if within thirty days after the interest accruing upon any such mortgage or bond has become payable, and after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any competent court, require the appointment of a judicial factor, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage or bond has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, and interest, without prejudice to his right to sue for such principal rest. money, together with all arrears of interest, in any competent court, may, if his debt amount to the prescribed sum alone, or if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a judicial factor, by an application to be made as hereinafter provided.

57. Every application for a judicial factor in the cases aforesaid shall be made to the court of session, and on any factor to be such application so made, and after hearing the parties it appointed shall be lawful for the said court, by order in writing, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made, all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; to judicial received by or to the use of the party to whom such in-

Borrowing of money.

Interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such judicial factor shall have been appointed; and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such judicial factor shall cease, and he shall be bound to account to the company for his intromissions, or the sums received by him, and to pay over to their treasurer any balance that may be in his hands.

*Wh n power of judicial factor to cease.**Access to books by mortgagors.*

58. At all reasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom without fee or reward.

Conversion of borrowed money into capital.

And with respect to the conversion of the borrowed money into capital, be it enacted as follows:—

Sum authorized to be borrowed may be raised by creating new shares.

59. It shall be lawful for the company, if they think fit, unless it be otherwise provided by the special act, to raise the additional sum so authorized to be borrowed, or any part thereof, by creating new shares of the company, instead of borrowing the same, or having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares; but no such augmentation of capital as aforesaid shall take place without the previous authority of a general meeting of the company.

New shares to be subject to same provisions as original shares.

60. The capital so to be raised by the creation of new shares shall be considered as part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on nonpayment of calls, or otherwise, as if it had been part of the original capital, except as to the times of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the company from time to time to fix as they shall think fit.

If old shares at premium, taking place by the creation of new shares to be offered to the shareholders.

61. If at the time of any such augmentation of capital at premium, taking place by the creation of new shares the then existing shares be at a premium, or of greater actual value than the nominal value thereof, then, unless it be otherwise provided by the special act, the sum so to be raised shall be divided into shares of such amount as will conveniently allow the same to be apportioned among the then shareholders in proportion to the existing shares held by them respectively; and such new shares shall be offered to the then shareholders in the proportion aforesaid; and such offer shall be made by letter under the hand of the secretary given to or sent by post, addressed to each shareholder according to his address in the shareholders' address-book, or left at his usual or last place of abode.

62. The said new shares shall vest in and belong to the Shares to shareholders who shall accept the same, and pay the value vest in the thereof to the company at the time and by the instalments parties accepting; which shall be fixed by the company; and if any shareholder fail for one month after such offer of new shares to accept the same, and pay the instalments called for in respect thereof, it shall be lawful for the company to dispose of such shares in such manner as they shall deem most for the advantage of the company.

63. If at the time of such augmentation of capital taking place the existing shares be not at a premium, then premium, to such new shares may be of such amount, and may be issued as issued in such manner, and on such terms, as the company think fit.

And with respect to the consolidation of the shares into stock, be it enacted as follows :

64. It shall be lawful for the company from time to time, with the consent of three-fifths of the votes of the shareholders present in person, or by proxy, at any general meeting of the company, when due notice for that purpose shall have been given, to convert or consolidate all or any part of the shares then existing in the capital of the company, and in respect whereof the whole money subscribed shall have been paid up, into a general capital stock, to be divided amongst the shareholders according to their respective interests therein.

65. After such conversion or consolidation shall have taken place, all the provisions contained in this or the special act which require or imply that the capital of the company shall be divided into shares of any fixed amount, and distinguished by numbers, shall, as to so much of the capital as shall have been so converted or consolidated into stock, cease and be of no effect, and the several holders of such stock may thenceforth transfer their respective interests therein, or any parts of such interests, in the same manner and subject to the same regulations and provisions as or according to which any shares in the capital of the company might be transferred under the provisions of this or the special act; and the company shall cause an entry to be made in some book to be kept for that purpose, of every such transfer; and for every such entry they may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, a sum not exceeding two shillings and sixpence.

66. The company shall from time to time cause the Register of names of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a dated stock book to be kept for the purpose, and to be called "The

to be dis-
posed of by
the direc-
tors.

If not at a
premium, to
be issued as
company
think fit.

*Consolidation of
shares.*

Company
may conso-
lidate
shares into
stock.

To cease.
Transfer of
stock.

Registry of
transfer.

Fee.

to be kept.

Inspection. Register of Holders of Consolidated Stock ;" and such book shall be accessible at all seasonable times to the several holders of shares or stock in the undertaking.

Proprietors of stock entitled to dividends, 67. The several holders of such stock shall be entitled to participate in the dividends and profits of the company, according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages, for the purpose of voting at meetings of the company, qualification for the office of directors, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company shall be conferred by any aliquot part of such amount of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages respectively.

Application of capital. 68. And be it enacted, That all the money raised by the company, whether by subscriptions of the shareholders, or by loan or otherwise, shall be applied, firstly, in paying the costs and expenses incurred in obtaining the special act, and all expenses incident thereto, and, secondly, in carrying the purposes of the company into execution.

General meetings. And with respect to the general meetings of the company, and the exercise of the right of voting by the shareholders, be it enacted as follows :

Ordinary meetings to be held half yearly. 69. The first general meeting of the shareholders of the company shall be held within the prescribed time, or if no time be prescribed, within one month after the passing of the special act, and the future general meetings shall be held at the prescribed periods, and if no periods be prescribed, in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting ; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings;" and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and if no place be prescribed, then at some place to be appointed by the directors.

Business at ordinary meetings. 70. No matters, except such as are appointed by this or the special act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting.

Extraordinary meetings 71. Every general meeting of the shareholders, other than an ordinary meeting, shall be called an "extraordinary meeting ;" and such meetings may be convened by the directors at such times as they think fit.

72. No extraordinary meeting shall enter upon any Notice of business not set forth in the notice upon which it shall business. have been convened.

73. It shall be lawful for the prescribed number of Shareholders, holding in the aggregate shares to the prescribed amount, or, where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one-tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company ; and such requisition shall fully express the object of the Requisition meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual places of abode ; and forthwith upon the receipt of such requisition, the directors shall convene a meeting of the shareholders ; and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number of shareholders, or such other number as aforesaid, qualified as aforesaid, may call such meeting, by giving fourteen days' public notice thereof.

On failure of directors, shareholders may call meeting.

74. Ten days' public notice at the least of all meetings, whether ordinary or extraordinary, shall be given by advertisement, which shall specify the place, the day, and the hour of meeting ; and every notice of an extraordinary meeting, or of an ordinary meeting, if any other business than the business hereby or by the special act appointed for ordinary meetings is to be done thereat, shall specify the purpose for which the meeting is called.

75. In order to constitute a meeting (whether ordinary or extraordinary) there shall be present, either personally or by proxy, the prescribed quorum, and if no quorum be present, then shareholders holding in the aggregate not less than one-twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders holding not less than one-twentieth of the capital of the company, shall be the quorum ; and if within one hour from the time appointed for such meeting said quorum be not present no business shall be transacted at the meeting, other than the declaring of a dividend, in case that shall be one of the objects of the meeting, but such meeting shall, except in the case of a meeting for the election of directors, hereinafter mentioned, be held to be adjourned "sine die."

If quorum not present, meeting to be adjourned.

76. At every meeting of the company one or other of Chairman the following persons shall preside as chairman, that is to say, the chairman of the directors, or in his absence the meetings.

- General Meetings.* — deputy chairman (if any), or in the absence of the chairman and deputy chairman some one of the directors of the company to be chosen for that purpose by the meeting, or in the absence of the chairman and deputy chairman and of all the directors, any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting.
- Business at meetings and adjournments.* 77. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only; and every such meeting may be adjourned from time to time, and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.
- Votes of shareholders.* 78. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares: provided always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.
- Manner of voting.* 79. The votes may be given either personally or by proxies, being shareholders, authorized by writing according to the form in the schedule (F.) to this act annexed, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.
- Regulations as to proxies.* 80. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy have been transmitted to the secretary of the company within the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.
- Votes of joint shareholders.* 81. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof; and on all occasions the vote of such first-named shareholder, either in person or by proxy,

shall be allowed as the vote in respect of such share, *General* without proof of the concurrence of the other holders *meetings*.

82. If any shareholder be a lunatic or idiot, fatuous or ^{Votes of} ~~furious~~ person, such lunatic or idiot, fatuous or ~~furious~~ person may vote by his tutor, curator, or other person appointed ^{lunatics and} ~~furious~~ ^{minors &c.} to manage his estate ; and if any shareholder be a minor he may vote by his ~~tutors~~ or curators or any one of them ; and every such vote may be given either in person or by proxy.

83. Whenever in this or the special act the consent of ^{Proof of a} any particular majority of votes at any meeting of the particular company is required in order to authorize any proceeding ^{majority of} ~~of the company, such particular majority shall only be~~ required to be proved in the event of a poll being demanded ^{votes only} at such meeting ; and if such poll be not demanded, then ^{required in} the event of a poll being demanded a declaration by the chairman that the resolution authorizing such proceeding has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient authority for such proceeding, without proof of the number or proportion of votes recorded in favour of or against the same.

And with respect to the appointment and rotation of ^{Appointment} directors, be it enacted as follows : ^{of}

84. The number of directors shall be the prescribed ^{number.}

85. Where the company shall be authorized by the special act to increase or to reduce the number of the directors it shall be lawful for the company, from time to time, in general meeting, after due notice for that purpose, to increase or reduce the number of the directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum of their meetings.

86. The directors appointed by the special act shall, ^{Directors} unless thereby otherwise provided, continue in office until appointed the first ordinary meeting to be held in the year next ^{by special} after that in which the special act shall have passed ; and ^{act to con-} at such meeting the shareholders present, personally or by ^{tinue in} proxy, may either continue in office the directors appointed ^{office for} by the special act, or any number of them, or may elect ^{one year.} a new body of directors, or directors to supply the places ^{Election of} of those not continued in office, the directors appointed by new direct-^{ors.} the special act being eligible as members of such new body, and at the first ordinary meeting to be held every year thereafter the shareholders present, personally or by proxy, shall elect persons to supply the places of the direc-^{tors then retiring from office, agreeably to the provisions}

*Appoint-
ment of
directors.*

hereinafter contained; and the several persons elected at any such meeting, being neither removed nor disqualified, nor having resigned, shall continue to be directors until others are elected in their stead, as hereinafter mentioned.

*Existing
directors
continued
on failure
of meeting
for election
of directors.*

87. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting no election of directors shall be made, but such meeting shall stand adjourned till the following day at the same time and place; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting, the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year.

*Qualifica-
tion of di-
rectors.*

88. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number, if any, of shares; and no person holding an office or place of trust or profit under the company, or interested in any contract with the company, shall be capable of being a director; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director.

*Cases in
which office
of director
shall be-
come va-
cant.*

89. If any of the directors at any time subsequently to his election accept or continue to hold any other office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if such director at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director.

*Sharehold-
er of an in-
corporated
joint stock
company
not disqua-
lified.*

90. Provided always, that no person, being a shareholder or member of any incorporated joint stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the special act; but no such director, being a shareholder or member of such joint stock company, shall vote on any question as to any contract with such joint stock company.

*Rotation of
directors.*

91. The directors appointed by the special act, and continued in office as aforesaid, or the directors elected to supply the places of those retiring as aforesaid, shall, subject to the provision hereinbefore contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following, the individuals

to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree; (that is to say,) *Appointment and rotation of directors.*

At the end of the first year after the first election of directors the prescribed number, and if no number be prescribed one-third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office:

At the end of the second year the prescribed number, and if no number be prescribed one-half of the remaining number of such directors, to be determined in like manner, shall go out of office:

At the end of the third year the prescribed number, and if no number be prescribed the remainder of such directors, shall go out of office:

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders; and at the first ordinary meeting in every subsequent year the prescribed number, and if no number be prescribed one-third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner; nevertheless every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director: provided always, that if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one-third as may be, shall go out of office, so that the whole number shall go out of office in three years.

92. If any director die, or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if vacancies they think proper so to do, may elect in his place some other shareholder, duly qualified, to be a director; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

And with respect to the powers of the directors, and the powers of the company to be exercised only in general meetings, be it enacted as follows:

93. The directors shall have the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company, except as to such matters as are directed by this or

Powers of directors.

the special act to be transacted by a general meeting of the company, but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of this and the special act ; and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose, but not so as to render invalid any act done by the directors prior to any resolution passed by such general meeting.

Powers of the company to be exercised only at a general meeting.

94. Except as otherwise provided by the special act, the following powers of the company, (that is to say,) the choice and removal of the directors, except as hereinbefore mentioned, and the increasing or reducing of their number where authorized by the special act, the choice of auditors, the determination as to the remuneration of the directors, auditors, treasurer, and secretary, the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, and the declaration of dividends, shall be exercised only at a general meeting of the company.

And with respect to the proceedings and liabilities of the directors, be it enacted as follows :

Meetings of directors, to be called by the secretary.

95. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper, from time to time, and from place to place ; and at any time any two of the directors may require the secretary to call a meeting of the directors, and in order to constitute a meeting of directors there shall be present at the least the prescribed quorum, and when no quorum shall be prescribed there shall be present at least one-third of the directors ; and all questions at any such meeting shall be determined by the majority of votes of the directors present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as one of the directors.

*Quorum.**Votes.**Directors to elect permanent chairman.*

96. At the first meeting of directors held after the passing of the special act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also, if they think fit, choose another director to act as deputy chairman for the same period ; and if the chairman or deputy chairman die or resign, or cease to be a director, or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy ; and every such chairman or deputy chairman so elected as last aforesaid shall continue in office so long only as the

Deputy chairman.

person in whose place he may be so elected would have *Proceedings of directors.*
been entitled to continue if such death, resignation, removal, or disqualification had not happened.

97. If at any meeting of the directors neither the chairman nor deputy chairman be present the directors present shall choose some one of their number to be chairman of such meeting. *Occasional chairman of directors.*

98. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit, within the prescribed limits, if any, and they may grant to such committees respectively power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to intrust to them. *Committees of directors.*

99. The said committees may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers intrusted to them except at a meeting at which there shall be present the prescribed quorum, or if no quorum be prescribed then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee. *Meetings of committees. Quorum. Chairman. Votes. Casting vote.*

100. The power which may be granted to any such committee to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised as follows; (that is to say,) *Power to make contracts. make contracts on behalf of the company.*

With respect to any contract which, if made between private persons, would be by law required to be in writing, deed or by agreement in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, either under the common seal of the company or signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same: *Contracts.*

With respect to any contract which, if made between private persons, would by law be valid, although made by parol by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same: *Contracts out writing.*

Contracts to be binding on company and all other parties. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be; and on any default in the execution of any such contract, either by the company or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought had the same contracts been made between private persons only.

Proceedings to be entered in books,

to be signed by chairman and to be evidence.

Acts of directors to be valid, notwithstanding defects in their appointment.

Directors not to be personally liable.

Directors to be indemnified for all

101. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors; and every such entry shall be signed by the chairman of such meeting; and such entry, so signed, shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed, until the contrary be proved.

102. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

103. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors, and administrators, shall be indemnified out of the capital of the company for all

payments made or liability incurred in respect of any payments acts done by them, and for all losses, costs, and damages made and which they may incur in the execution of the powers liabilities granted to them; and the directors for the time being of incurred. the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, if any.

And with respect to the appointment and duties of *Auditors.* auditors, be it enacted as follows:

104. Except where by the special act auditors shall be directed to be appointed otherwise than by the company, auditors. the company shall, at the first ordinary meeting after the passing of the special act, elect the prescribed number of auditors, and if no number is prescribed two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office, according to the provision hereinafter contained; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead.

105. Where no other qualification shall be prescribed Qualifica- by the special act, every auditor shall have at least one tion of share in the undertaking; and he shall not hold any office auditors. in the company, nor be in any other manner interested in its concerns, except as a shareholder.

106. One of such auditors (to be determined in the Rotation of first instance by ballot between themselves, unless they auditors. shall otherwise agree, and afterwards by seniority) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall, with respect Eligible for to the going out of office by rotation, be deemed a new re-election. auditor.

107. If any vacancy take place among the auditors in Vacancies the course of the current year, then at any general meet. in office of ing of the company the vacancy may, if the company think auditor. fit, be supplied by election of the shareholders.

108. The provision of this act respecting the failure of Failure of an ordinary meeting at which directors ought to be chosen meeting to shall apply, "mutatis mutandis," to any ordinary meeting at elect audi- which an auditor ought to be appointed. tor.

109. The directors shall deliver to such auditors the Directors half-yearly or other periodical accounts and balance sheet, to deliver fourteen days at the least before the ensuing ordinary balance meeting at which the same are required to be produced to sheet &c. the shareholders, as hereinafter provided. to auditors.

Auditors to examine accounts. 110. It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be presented to the shareholders, and to examine the same.

Auditors may employ accountants &c. 111. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper, at the expense of the company, and they shall either make a special report on the said accounts, or simply confirm the same ; and such report or confirmation shall be read, together with the report of the directors, at the ordinary meeting.

Confirmation of accounts. And with respect to the accountability of the officers of the company, be it enacted as follows :—

Security. 112. Before any person intrusted with the custody or control of monies, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office.

Officers to deliver accounts on demand, with vouchers and receipts, and pay balance. 113. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing under his hand of all monies received by him on behalf of the company ; and such account shall state how, and to whom, and for what purpose such monies shall have been disposed of ; and, together with such account, such officer shall deliver the vouchers and receipts for such payments, and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all monies which shall appear to be owing by him upon the balance of such accounts.

Summary remedy against officers failing to account, 114. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if for three days after being thereunto required he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special act, or any act incorporated therewith, or belonging to the company, then, on complaint thereof being made to the sheriff or a justice, such sheriff or justice shall summon or order such officer to appear before such sheriff, if the summons or order be issued by a sheriff, or before two or more justices, if the summons or order be issued by a justice, at a time and place to be set forth in such summons or order to answer such charge ; and upon the appearance of such officer, or, in his absence, upon proof that such summons or order was

by summons before sheriff or two justices,

personally served upon him, or left at his last known place of abode, such sheriff or justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer ; and if it appear, either upon confession of such officer or upon evidence, or upon inspection of the account, that any monies of the company are in the hands of such officer, or owing by him to the company, such sheriff or justices may order such officer to pay the same ; and if he fail to pay the amount it shall be lawful for such sheriff or justices to grant a warrant to levy the same by poinding and sale, or in default thereof, to commit the offender to gaol, there to remain without bail for a period not exceeding three months.

115. If any such officer refuse to produce and deliver to Officers relating to his accounts, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such sheriff or justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company.

116. Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the sheriff or justice before whom the complaint is made, instead of issuing his summons or order, to issue his warrant for the bringing such officer before the sheriff, to answer to the charge, as hereinbefore directed, if the warrant has been issued by the sheriff, or before any justice if the warrant shall have been issued by a justice ; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give surety to the satisfaction of such justice for his appearance before such justices to answer the complaint of the company.

117. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any to be dis-remedy which they might otherwise have against such charged officer, or any surety of such officer.

Accountability of officers.

who may order payment.

deliver up documents &c. to be imprisoned.

issued in the first instance.

Accounts.

— And with respect to the keeping of accounts, and the right of inspection thereof by the shareholders, be it enacted as follows:

Accounts to be kept of all money received or expended.

118. The directors shall cause full and true accounts to be kept of all sums of money received or expended on account of the company by the directors, and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received or disbursed and paid.

Books to be balanced and balance sheet made up.

119. The books of the company shall be balanced at the prescribed periods, and if no periods be prescribed, fourteen days at least before each ordinary meeting; and forthwith on the books being so balanced an exact balance sheet shall be made up, which shall exhibit a true statement of the capital stock, credits, and property of every description belonging to the company, and the debts due by the company at the date of making such balance sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half year: and previously to each ordinary meeting such balance sheet shall be examined by the directors, or any three of their number, and shall be signed by the chairman or deputy chairman of the directors.

Books and balance sheet to be open for the inspection of shareholders at stated times.

120. The books so balanced, together with such balance sheet as aforesaid, shall for the prescribed periods, and if no periods be prescribed for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the company; but the shareholders shall not be entitled at any time, except during the periods aforesaid, to demand the inspection of such books, unless in virtue of a written order signed by three of the directors.

Balance sheet to be produced at meeting.

121. And be it enacted, that the directors shall produce to the shareholders assembled at such ordinary meeting the said balance sheet as aforesaid, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon, as hereinbefore provided.

Directors to appoint book-keeper, who shall allow inspection of accounts at appointed times.

122. The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose; and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or entries therefrom, at any reasonable time during the prescribed periods, and if no periods be prescribed during one fortnight before and one month after every ordinary meeting; and if he fail to permit any such shareholder to inspect such books, or take copies or extracts therefrom, during the periods aforesaid, he shall forfeit to such share-

Penalty.

holder for every such offence a sum not exceeding five pounds.

And with respect to the making of dividends, be it *Dividends.* enacted as follows:

123. Previously to every ordinary meeting at which a dividend is intended to be declared the directors shall to be prepared, showing the profits, if any, of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme.

124. The company shall not make any dividend whereby their capital stock will be in any degree reduced: provided always, that the word "dividend" shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose at an extraordinary meeting to be convened for that object.

125. Before apportioning the profits to be divided among the shareholders the directors may, if they think fit, set aside thereout such sum as they may think proper apart a fund to meet contingencies, or for enlarging, repairing, or improving the works connected with the undertaking, or any part thereof, and may divide the balance only among the shareholders.

126. No dividend shall be paid in respect of any share until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable shall have been paid.

And with respect to the making of bye-laws, be it *Bye Laws.* enacted as follows:

127. It shall be lawful for the company from time to time to make such bye-laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such bye-laws, and make others, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act; and such bye-laws shall be reduced into writing, and shall have affixed thereto

Copies to be given to officers &c. the common seal of the company ; and a copy of such bye-laws shall be given to every officer and servant of the company affected thereby.

Fines may be imposed for breach of such bye-laws. 128. It shall be lawful for the company, by such bye-laws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye-laws, as the company think fit, not exceeding five pounds for any one offence.

Bye-laws to be so framed that penalties may be mitigated. 129. All the bye-laws to be made by the company shall be so framed as to allow the sheriff or justices before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid, if such sheriff shall think fit.

Evidence of bye-laws. 130. The production of a written or printed copy of the bye-laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye-laws in all cases of prosecution under the same.

Arbitration.

Where questions are to be determined by arbitration, arbitrators to be appointed within fourteen days after notice 131. When any dispute directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred ; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation ; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute ; and in such case the award or determination of such single arbitrator shall be final.

On failure of one party the other may appoint arbitrator to act on behalf of both. If any arbitrator die or refuse to act, another may be nominated. 132. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable or refuse or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place ; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator

may proceed ex parte ; and every arbitrator so to be constituted as aforesaid shall have the same powers and the remaining authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

133. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon to appoint the matters so referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ ; and if such umpire shall die, or refuse or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect to act, appoint another umpire in his place ; and the decision of every such umpire on the matters so referred to him shall be final.

134. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the lord ordinary, on the application of either party to such arbitration, to appoint an umpire ; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

135. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer oaths. minister the oaths necessary for that purpose, and may also grant diligence for the recovery of such documents as either party may require, or for citing witnesses ; and, on application to the lord ordinary, letters of supplement, or such other writ as may be necessary, shall be issued by the lord ordinary, in support of such diligence.

136. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, in the determination by the arbitrators shall be in the discretion of the arbitrators or the umpire, as the case may be.

And with respect to the giving of notices, be it enacted *Notices.*
as follows :

137. Any summons or notice, or any writ, or other proceeding, at law or in equity, requiring to be served upon the company, may be served by the same being left upon company, or transmitted through the post directed to the principal office of the company, or one of their principal offices, where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

138. Notices requiring to be served by the company upon the shareholders may, unless expressly required to

Service of notices by

company on be served personally, be served by the same being transmitted through the post directed according to the registered address or other known address of the shareholder, within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice ; and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was so put into the post-office.

Notices to joint proprietors of shares.

139. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons shall be named first in the register of shareholders ; and notice so given shall be sufficient notice to all the proprietors of such share.

Notices by advertisement.

140. All notices required by this or the special act, or any act incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situated.

Authentication of notices.

141. Every summons, demand, or notice, or other such document requiring authentication by the company, may be signed by two directors, or by the treasurer or the secretary of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Proof of debts in bankruptcy.

142. And be it enacted, That if any person against whom the company shall have any claim or demand become bankrupt, or take the benefit of any act for the relief of insolvent debtors, it shall be lawful for the secretary or treasurer of the company, in all proceedings against the estate of such bankrupt or insolvent, or under any fiat, sequestration, or act of insolvency against such bankrupt or insolvent, to represent the company, and act in their behalf, in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and not of the company.

Tender of amends.

143. And be it enacted, That if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or by virtue of any power or authority thereby given, and if, before action brought in respect therof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action ; and if no such tender shall have been made it shall be lawful for the defender, by leave of the court where such

After tender of sufficient amends, party not to recover in any action.

action shall be pending, at any time before the record is closed, to pay into court such sum of money as he shall think fit; and thereupon such proceedings shall be had as in other cases where defenders are allowed to pay money into court.

And with respect to the recovery of damages not specially provided for, be it enacted as follows : *Recovery of damages and penalties.*

144. In all cases where any damages, costs, or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by the sheriff; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by poinding and sale of the goods of the company or other party liable as aforesaid; and the sheriff shall, on application, issue his warrant accordingly.

145. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, or expenses, payable by the company, the same may, if the amount cannot be thereof do not exceed twenty pounds, be recovered by poinding and sale of the goods of the treasurer of the company; and the sheriff, on application, shall issue his warrant accordingly; but no such poinding and sale shall be executed against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress or poinding and sale as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same. If goods of company by sale of goods of treasurer. Notice to treasurer. Treasurer may sue the company for the same.

146. Where, in this or the special act, or any act incorporated therewith, any question of expenses, charges, or damages is referred to the determination of any sheriff or justices, it shall be lawful for the sheriff or any justice, upon the application of either party, to summon the other party to appear before such sheriff, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such sheriff, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on Proceedings of damages, &c.

oath; and the costs of every such inquiry shall be in the discretion of such sheriff or justices, and he or they shall determine the amount thereof.

Company
to publish
short par-
ticulars of
offences for
which any
penalty is
imposed,
and affix in
conspicu-
ous places,

and renew
when obli-
terated.

Penalty for
defacing
boards used
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Penalties
may be re-
covered be-
fore sheriff
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tices.

147. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special act, or any act incorporated therewith, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

148. If any person pull down or injure any board put up or affixed as required by this or the special act, or any act incorporated therewith, for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

149. Every penalty or forfeiture imposed by this or the special act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before the sheriff or two justices; and on complaint being made to any sheriff or justice he shall issue an order requiring the party complained against to appear before himself, if the order be issued by a sheriff, or before two or more justices, if the order be issued by a justice, at a time and place to be named in such order; and every such order shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such order, it shall be lawful for any sheriff or two justices to proceed to the hearing of the complaint; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such sheriff or justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such

costs attending the conviction, as such sheriff or justices tices may shall think fit.

150. If forthwith, upon any such adjudication as afore-
said the amount of the penalty or forfeiture, and of such may be
costs as aforesaid, be not paid, the amount of such penalty levied by
and costs shall be levied by poinding and sale ; and such poinding
sheriff or justices, or either of them, shall issue his or their and sale.
warrant of poinding and sale accordingly.

151. It shall be lawful for any such sheriff or justices Sheriff or
to order any offender so convicted as aforesaid to be de-
tained and kept in safe custody until return can be con-
veniently made to the warrant of poinding and sale to be offenders
issued for levying such penalty or forfeiture, and costs, until return
unless the offender give sufficient security, by way of be made to
recognizance or otherwise, to the satisfaction of the sheriff warrant of
or justices, for his appearance before him on the day poinding
appointed for such return, such day not being more than and sale.
eight days from the time of taking such security ; but if
before issuing such warrant of poinding and sale it shall
appear to the sheriff or justices, by the admission of the
offender or otherwise, that no sufficient poinding and sale If no suffi-
can be had within the jurisdiction of such sheriff or jus- cient poind-
ties whereon to levy such penalty or forfeiture, and costs, ing and sale
he or they may, if he or they think fit, refrain from issuing can be had,
such warrant ; and in such case, or if such warrant shall offenders
have been issued, and upon the return thereof such insuf- may be im-
ficiency as aforesaid shall be made to appear to the sheriff prisoned.
or justices, then such sheriff or justices shall, by warrant,
cause such offender to be committed to gaol, there to
remain without bail for any term not exceeding three
months, unless such penalty or forfeiture, and costs, be
sooner paid and satisfied.

152. Where in this or the special act, or any act incor-
porated therewith, any sum of money, whether in the Penalties,
nature of penalty or otherwise, is directed to be levied by &c., to be
poinding and sale, such sum of money shall be levied by poinding
poinding and sale of the goods and effects of the party and sale of
liable to pay the same, and the overplus arising from the goods and
sale of such goods and effects, after satisfying such sum of effects of
money and the expenses of the poinding and sale, shall be offender.
returned, on demand, to the party whose goods shall have
been seized.

153. No poinding and sale made by virtue of this or Poinding
the special act, or any act incorporated therewith, shall be and sale not
deemed unlawful, nor shall any party making the same be unlawful
deemed a trespasser or wrongdoer, on account of any defect for want of
or want of form in the summons, conviction, warrant, or form.
other proceeding relating thereto ; but all persons ag-
grieved by such defect or irregularity may recover full

Sheriff or justices may divide penalties between informer and kirk session. satisfaction for the special damage in an action before the sheriff court.

Penalties to be sued for within six months.

154. The sheriff or justices by whom any such penalty or forfeiture shall be imposed, where the application thereof is not otherwise provided for, may award not more than one half thereof to the informer, and shall award the remainder to the kirk session of the parish in which the offence shall have been committed, for the benefit of the poor of such parish.

155. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before the sheriff or justices, unless the complaint respecting such offence shall have been made before such sheriff or some justice within six months next after the commission of such offence.

Damage to property of company to be made good in addition to penalty.

156. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special act, or any act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the sheriff or justices by whom the party incurring such penalty shall have been convicted; and on nonpayment of such damages, on demand, the same shall be levied by poinding and sale, and such sheriff or justices shall issue his or their warrant accordingly.

Sheriff or justices may summon witnesses.

157. It shall be lawful for any sheriff or justice to summon any person to appear before him as a witness in any matter in which such sheriff or justice, or two or more justices, shall have jurisdiction, under the provisions of this or the special act, or any act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such sheriff or justice, or justices, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Officers of company may detain offenders whose

158. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall be found committing any offence against the provisions of this or the special act, or any act incorporated therewith, and whose

name and residence shall be unknown to such officer or names and agent, and convey him, with all convenient despatch, before the sheriff or a justice, without any warrant or other authority than this or the special act; and such sheriff or justice shall proceed, with all convenient despatch, in the matter of the complaint against such offender.

159. Any sheriff to whom any application is authorized to be made, and before whom any judicial proceedings proceed and shall in consequence take place or become necessary, under or by virtue of this or the special act, or any act incorporated therewith, shall, and he is hereby authorized and required summarily to call before him all parties who appear to him to be interested therein, and to proceed forthwith to hear, *viva voce*, and pronounce judgment regarding the matters mentioned in such application or proceeding, or to do the several matters and things required by this act to be done by him, without waiting the ordinary course of the roll of causes before him, and without written pleadings, or a written record, or reducing any evidence which may be led by either of the parties to writing, unless and except where the said sheriff shall consider that the matters mentioned in such application or proceedings can with more advantage be decided with written pleadings and with a written record, in which case he shall proceed to make up a record, and bring the said matters to a conclusion with all convenient despatch; and the orders and judgments of the said sheriff, when pronounced without a record, shall be final and conclusive, and not subject to review by suspension or advocation, or to record to be final.

160. The sheriff or justice, or justices, before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (G.) to this act annexed.

161. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by suspension or otherwise into any superior court.

162. In all cases which may come before any sheriff substitute under this or the special act, or any act incorporated therewith, in which written pleadings shall have been allowed, and a written record shall have been made up, and where the evidence which has been led by the parties shall have been reduced to writing, but in no other case whatever, it shall be competent for any of the parties thereto, within seven days after a final judgment shall have been pronounced by such sheriff substitute, to appeal

Appeal.
In cases
before any
sheriff-sub-
stitute, in
which writ-
ten plead-
ings, &c.,
have been

allowed, parties may appeal to sheriff.

Judgment of sheriff not subject to review.

Parties aggrieved by decision of justices may appeal to quarter-sessions on giving notice and security.

Court to hear the appeal, and make such order as they think reasonable.

Access to special act.

Copies of special act to be kept at principal office,

and deposited with

against the same to the sheriff of the county, by lodging a minute of appeal with the sheriff clerk of such county, or his depute ; and the said sheriff shall thereupon review the proceedings of the said sheriff substitute, and whole process, and, if he think proper, hear the parties *viva voce* thereon, and pronounce judgment ; and such judgment shall in no case be subject to review by suspension or ad- vocation, or to reduction, on any ground whatever.

163. If any party shall feel aggrieved by any deter- mination or adjudication of any justice, or two or more justices, with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incor- porated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen ; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor un- less the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

164. At the quarter sessions, for which such notice shall be given, the court shall proceed to hear and deter- mine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions ; and upon the hearing of such appeal, the court may, if they think fit, mitigate any penalty or forfeiture, or they may con- firm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satis- faction to be made to the party injured as they may judge reasonable ; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

And with respect to the provision to be made for afford- ing access to the special act by all parties interested, be it enacted as follows :

165. The company shall at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act printed by the printers to her majesty, or some of them ; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the

works shall extend, and in the office of the town clerk of clerks of every burgh or city into which, or within one mile of the peace which, the works shall extend, a copy of such special act, and town-so printed as aforesaid ; and the said clerks of the peace clerks. and town clerks shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, Inspection. and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present majesty, intituled, An act to compel clerks of 7 W. 4, and the peace for counties, and other persons, to take the 1 Vict.c.83. custody of such documents as shall be directed to be deposited with them under the standing orders of either house of parliament.

166. If the company shall fail to keep or deposit, as Penalty on hereinbefore mentioned, any of the said copies of the company special act, they shall forfeit twenty pounds for every failing to such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

167. And be it enacted, That this act may be amended Act may be or repealed by any act to be passed in this session of amended or parliament.

SCHEMES referred to by the foregoing Act.

A.—Form of Certificate of Share.

“The Company.”
Number

This is to certify, that A.B. of is the proprietor of the share Number of “The Company,” subject to the regulations of the said company. Given under the common seal of the said company, the day of in the year of our Lord

A.
Form of
certificate
of share.

B.—Form of Transfer of Shares or Stock.

I of in consideration of the sum of paid to me by of do hereby transfer to the said share [or shares], numbered in the undertaking called “The Company” [or pounds consolidated stock in the undertaking called “The

B.
Form of
transfer of
shares or
stock.

Schedules. Company," standing (or part of the stock standing) in my name in the books of the company], to hold unto the said his executors, administrators, and assigns [or successors and assigns], subject to the several conditions on which I held the same at the time of the execution hereof; and I the said do hereby agree to take the said share [or shares] [or stock], subject to the same conditions. [Here insert testing clause according to the form of the law of Scotland, if executed in Scotland, and if executed in England, the form of attestation usual in England.]

C.

Form of
mortgage
leed.

C.—Form of Mortgage Deed.

"The Company."

Mortgage, Number £
By virtue [here name the special act], we, "The Company," in consideration of the sum of pounds paid to us by A.B., of do assign unto the said A.B., his executors, administrators, and assignees, the said undertaking [and (in case such loan shall be in anticipation of the capital authorized to be raised) all future calls on shareholders], and all the tolls and sums of money arising by virtue of the said act, and all the estate, right, title, and interest of the company in the same, to hold unto the said A.B., his executors, administrators, and assigns, until the said sum of pounds, together with interest for the same at the rate of for every one hundred pounds by the year, be satisfied [the principal sum to be repaid at the end of years from the date hereof (in case any period be agreed upon for that purpose), at or any place of payment other than the principal office of the company]. In witness whereof, &c. [Here insert the testing clause of deeds executed in Scotland.]

D.

Form of
bond.

D.—Form of Bond.

"The Company."

Bond, Number £

By virtue of [here name the special act], we, "The Company," in consideration of the sum of pounds to us in hand paid by A. B., of do bind ourselves and our successors unto the said A. B., his executors, administrators, and assigns, in the sum of pounds, to be repaid to the said A. B., his executors, administrators, or assigns, at (in case any other place of payment than the principal office of the company

be intended) on the . . . day of . . . which will *Schedules*.
 be in the year one thousand eight hundred and . . .
 with a fifth part more of liquidate penalty in case of
 failure, together with interest for the same at the rate
 of . . . pounds per centum per annum, payable half-
 yearly on the . . . day of . . . and . . .
 day of . . . In witness whereof, &c. [Here insert
 the testing clause of deeds executed in Scotland.]

E.—*Form of Transfer of Mortgage or Bond.*

E.

I, A. B., of . . . in consideration of the sum of Form of
 . . . paid to me by G. H., of . . . do hereby transfer of
 transfer to the said G. H., his executors, administrators,
 mortgage and assigns, a certain bond [or mortgage] number . . .
 or bond.
 made by "The . . . Company," to . . .
 bearing date the . . . day of . . . for securing
 the sum of . . . and . . . interest [or, if such
 transfer be by endorsement, the within security], and all
 my right, estate, and interest in and to the money thereby
 secured [and if the transfer be of a mortgage, and in and
 to the tolls, money, and property thereby assigned].
 [Here insert Scotch testing clause, if executed in Scot-
 land, and if executed in England, the form of attestation
 usual in England].

F.—*Form of Proxy.*

F.

A. B. . . one of the proprietors of "The . . . Form of
 Company," doth hereby appoint C. D., of . . . to be proxy.
 the proxy of the said A. B., in his absence to vote in his
 name upon any matter relating to the undertaking pro-
 posed at the meeting of the proprietors of the said com-
 pany to be held on the . . . day of . . . next,
 in such manner as he the said C. D. doth think proper.
 In witness whereof the said A. B. hath hereunto set his
 hand [or, if a corporation, say the common seal of the
 corporation], the . . . day of . . . one
 thousand eight hundred and . . .

G.—*Form of Conviction before . . .*

G.

to wit.

Be it remembered, that on the . . . day of . . .
 in the year of our Lord . . . A. B. is convicted
 before me C., the sheriff, or before us D., E., two of her
 majesty's justices of the peace for the county of . . .
 [here describe the offence generally, and the time and

Form of
 conviction
 before she
 riff or jus-
 tices.

Schedules. place when and where committed,] contrary to the [here name the special act]. Given under my hand [or under our hands], the day and year first above written.

C	.	.	.
D	:	:	:
E	:	:	:

8 VICT. cap. 19.

An Act for consolidating in one Act certain provisions usually inserted in Acts authorizing the taking of lands for Undertakings of a Public Nature in Scotland. [8th May, 1845.]

Preamble. WHEREAS it is expedient to comprise in one general act sundry provisions usually introduced into acts of parliament relative to the acquisition of Lands in *Scotland* required for undertakings or works of a public nature, and the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves,

Act to apply to all undertakings in Scotland authorized by acts hereafter passed. Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this act shall apply to every undertaking in *Scotland* authorized by any act of parliament which shall hereafter be passed, and which shall authorize the taking of lands for such undertaking, and this act shall be incorporated with such act; and all the provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act.

Interpretations in this act. And with respect to the construction of this act, and other acts to be incorporated therewith, be it enacted as follows:

“Special act.” 2. The expression “the special act” used in this act shall be construed to mean any act which shall be hereafter passed, and which shall authorize the taking of lands for the undertaking to which the same relates, and with

which this act shall be so incorporated as aforesaid; and the word "prescribed" used in this act, in reference to "prescribed" any matter herein stated, shall be construed to refer to ed." such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special act" had been used; and the expression "the works" or "the undertaking" shall mean "the works or undertaking, of whatever nature, which shall work." by the special act be authorized to be executed; and the expression "the promoters of the undertaking" shall mean "promoters the parties, whether company, undertakers, commissioners, of the un- trustees, corporations, or private persons, by the special dertaking." act empowered to execute such works or undertaking.

3. And be it enacted, that the following words and ex- *Interpreta-*
pressions both in this and the special act shall have the *tions in*
several meanings hereby assigned to them, unless there be *this and*
something either in the subject or context repugnant to *the special*
such construction; (that is to say,) *act.*

Words importing the singular number only shall in- *Number.*
clude the plural number; and words importing the plural number only shall include the singular num-
ber.

Words importing the masculine gender only shall in- *Gender.*
clude females:

The word "lands" shall extend to houses, lands, tene- "Lands."
ments, and heritages of any description or tenure:

The word "lease" shall include a missive of lease : "Lease."

The word "month" shall mean calendar month : "Month."

The "lord ordinary" shall mean the lord ordinary of "Lord Or-
the court of session in Scotland officiating on the dinary."
bills in time of vacation, or the junior lord ordinary,
if in time of session, as the case may be :

The word "oath" shall include affirmation in the case "Oath."
of quakers, or other declaration or solemnity lawfully
substituted for an oath in the case of any other per-
sons exempted by law from the necessity of taking
an oath :

The word "county" shall include any ward or other "County."
like division of a county :

The word "sheriff" shall include the sheriff substitute : "Sheriff"

The word "justices" shall mean justices of the peace "Justices."
acting for the county, city, liberty, or place where
the matter requiring the cognizance of any such
justice shall arise, and who shall not be interested in
the matter; and where such matter shall arise in
respect of lands, being the property of one and the
same party, situate not wholly in any one county,

Interpretations in this and the special act.

—
“Two justices.”

“Owner.”

“The bank.”

Short title of the act.

Form in which portions of this act may be incorporated with other acts.

Purchase of lands by agreement.

—
Promoters may purchase by agreement lands au-

city, liberty, or place, the same shall mean a justice acting for the county, city, liberty, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression “two justices” shall be understood to mean two or more justices assembled and acting together:

Where, under the provisions of this or the special act, or any act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word “owner” shall be understood to mean any person or corporation, or trustees, or others, who, under the provisions of this or the special act, would be enabled to sell and convey lands to the promoters of the undertaking:

The expression “the bank” shall mean any one of the incorporated or chartered banks in Scotland.

4. And be it enacted, That in citing this act in other acts of parliament and in legal instruments, it shall be sufficient to use the expression “The Lands Clauses Consolidation (Scotland) Act, 1845.”

5. And whereas it may be convenient in some cases to incorporate with acts of parliament hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such act to enact that the clauses of this act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter) shall be incorporated with such act; and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

And with respect to the purchase of lands by agreement, be it enacted as follows:

6. Subject to the provisions of this and the special act, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special act authorized to be taken, and which shall be required for the purposes of such act, and with all parties having any right or interest in such lands, or by this or the special act enabled to sell and convey the same, for the absolute pur-

chase of any such lands, or such parts thereof as they shall thorized by think proper, and for the purchase of all rights and inter- special act- ests in such lands of what kind soever.

7. It shall be lawful for all parties, being possessed of Parties en- any lands, or any such right or interest therein, to con- titled to tract for, sell, convey, and dispose of such lands, or of such any such right therein, to the promoters of the undertaking, and to lands em- enter into all necessary agreements for these purposes, and powered to particularly it shall be lawful for the parties following so sell the to do ; (that is to say,) all corporations, heirs of entail, same to the life-renters, or persons holding any other partial or qualifi- lands em- cated estate or interest, married women seised in their own enter into right or entitled to terce or dower, or any other right or all neces- interest, husbands, tutors, curators, and other guardians sary agree- ments. for infants, minors, lunatics or idiots, fatuous or furious persons, or for persons under any other disability or incapacity, judicial factors, trustees or feoffees in trust for charitable or other purposes, executors, and administrators ; and the power so to contract for, sell, convey, and dispose Parties of as aforesaid may lawfully be exercised by all such having li- parties, not only on behalf of themselves and their re- mited in- spective heirs, executors, administrators, and successors, rests en- but also for and on behalf of every person entitled in re- abled to sell version or expectancy after them, and as to such married and convey. women as if they were sole, and as to such tutors, curators, guardians, judicial factors, and trustees, on behalf of those for whom they respectively act, whether infants, minors, issue unborn, bankrupts, lunatics, idiots, fatuous and furious persons, married women, or other incapacitated persons, and that to the same extent as such infants, minors, bankrupts, lunatics, idiots, fatuous and furious persons, married women, and other incapacitated persons re- spectively could have exercised the same power under the authority of this and the special act if they had respectively been under no disability.

8. The power hereinafter given to discharge any lands Parties from feu duties or casualties of superiority, as well as under dis- every other power required to be exercised by any supe- rior pursuant to the provisions of this or the special act, or any act incorporated therewith, and the power to dis- charge lands from any rent, payment, charge, feu duties, ground annuals, or other real burdens or incumbrances, and to agree for the apportionment of any such rent, pay- ment, charge, feu duties, ground annuals, or other real burdens and incumbrances, shall extend to and may law- fully be exercised by every party hereinbefore enabled to contract for, sell, dispose of, or convey lands or rights or interests therein to the company.

9. The purchase money or compensation to be paid for Amount of

compensation, in case of parties under disability, to be ascertained by valuation, and paid into the bank.

any lands, or any rights or interests therein, to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands, or rights or interests therein, except under the provisions of this or the special act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the sheriff, or by the verdict of a jury, or by arbitration, or by the valuation of a valuator appointed by the sheriff under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical valuators, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two valuators cannot agree in the valuation, then by such third valuator as the sheriff shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two valuators, if they agree, or if not, then the valuator nominated by the said sheriff, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank, for the benefit of the parties interested, in manner hereinafter mentioned.

Vendor absolutely entitled may sell lands on feu duties, &c.

10. It shall be lawful for all parties entitled to dispose of absolutely any lands authorized to be purchased for the purposes of the special act to convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual feu duty or ground annual payable by the promoters of the undertaking.

Feu duties, &c., to be charged on tolls.

11. The feu duties or ground annuals stipulated by any such conveyance shall be charged on the tolls or rates, if any, payable under the special act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such feu duties or ground annuals become payable; and if at any time the same be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such feu duties or ground annuals shall be payable, may either recover the same from the promoters of the undertaking, with expenses of suit, by action in any competent court, or it shall be lawful for him to levy the same by poinding and sale of the goods and effects of the promoters of the undertaking.

Power to purchase lands for additional

12. In case the promoters of the undertaking shall be empowered by the special act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions herein-before contained, would be

enabled to sell, feu, and convey lands, to sell, feu and convey the lands so authorized to be purchased for extraordinary purposes.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner and for such considerations and to such persons as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time, but the total quantity of land to be held at any one time by the promoters of the undertaking for the purposes aforesaid shall not exceed the prescribed quantity.

14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase or acquire more than the prescribed quantity from any party under legal disability, or who would not be able to sell or convey such lands, except under the powers of this and the special act; and if the promoters of the undertaking purchase or acquire the said quantity of land from any party under such legal disability, and afterwards sell or dispose of the whole or any part of the land so purchased, it shall not be lawful for any party, being under legal disability, to sell or convey to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

15. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital of the company or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed before it shall be lawful to put in force any of the powers of this or the special act, or any act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

16. A certificate, under the hands of the sheriff, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof; and on the application of the promoters of the undertaking, and the production of such evidence as such sheriff thinks proper and sufficient, such sheriff shall grant such certificate accordingly.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:

17. When the promoters of the undertaking shall require to purchase any of the lands which by this or the special

*Purchase
of lands
otherwise
than by
agreement.*

Promoters to give notice of their intention to take lands.

act, or any act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this or the special act to sell and convey the same, or their rights and interests therein, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Notice to state particulars of the lands required.

Notices to be served personally, or left at places of abode.

18. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties, or left at their last usual place of abode, if any such can, after diligent inquiry, be found; and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, such notices, when the same are to be given to an owner of lands, shall be served on the factor or agent, if any, of such owner, and shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

If parties fail to treat, or disagree as to compensation, the amount to be settled as aforesaid.

19. If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Disputes as to compensation may be referred to arbitration.

20. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this or the special act enabled to sell and convey any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands, or of any interest therein, or as to the compensation to be made in respect thereof, it shall be lawful for the parties to refer the same to arbitration.

21. If the compensation claimed and disputed shall not exceed fifty pounds, unless both parties agree to refer such compensation to arbitration, the same shall be settled by the sheriff.

22. It shall be lawful for the sheriff, upon the application of either party with respect to any such question of disputed compensation, to issue an order for the other party to appear before such sheriff, at a time and place to be named in the order; and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the order, it shall be lawful for such sheriff to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, without written pleadings or reducing the evidence to writing; and the expenses of every such inquiry, excepting the remunerative expenses of the sheriff, shall be in the discretion of such sheriff, and he shall settle the amount thereof; and the determination of the sheriff upon such question shall be final and conclusive, and not subject to review or appeal in any form or court whatever.

23. If the compensation claimed or offered in any case shall exceed fifty pounds, and if the party claiming such compensation desire to have the same settled by arbitration, and signify such desire to the promoters of the undertaking, before they have presented their petition to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, by a notice in writing, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose, then, within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner hereinafter provided.

24. When any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbiter, each party, on the request of the other party, shall nominate and appoint an arbiter, to whom such dispute shall be referred; and every appointment of an arbiter shall be made on the part of the company under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a company or corporation, under the hand of the proper

Appointment not to be revoked without consent.

officer or person authorized by such company or corporation, and such appointment shall be delivered to the arbiters and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbiter, such other party fail to appoint an arbiter, then upon such failure the party making the request, and having himself appointed an arbiter, may appoint such arbiter to act on behalf of both parties, and such arbiter may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbiter shall be final.

If arbiter die, &c., another may be appointed.

25. If, before the matters so referred shall be determined, any arbiter appointed by either party die, or become incapable, the party by whom such arbiter was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbiter may proceed *ex parte*; and every arbiter so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbiter at the time of such his death or disability as aforesaid.

Arbiters to appoint an oversman.

26. Where more than one arbiter shall have been appointed, such arbiters shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an oversman to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special act; and if such oversman shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another oversman in his place; and the decision of every such oversman on the matters on which the arbiters shall differ shall be final.

Lord Ordinary may appoint an oversman on neglect of the arbiters.

27. If in either of the cases aforesaid the said arbiters shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an oversman, it shall be lawful for the lord ordinary, on the application of either party to such arbitration, to appoint an oversman, and the decision of such oversman on the matters on which the arbiters shall differ, or which shall be referred to him under this or the special act, shall be final.

28. If, when a single arbiter shall have been appointed, such arbiter shall die, or become incapable to act, before arbiter die, he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special act, in the same manner as if such arbiter had not been appointed.

29. If, when more than one arbiter shall have been appointed, either of the arbiters refuse or neglect to act, the other arbiter may proceed *ex parte*, and if either of the arbiters refuse to act, the decision of such arbiter shall be as effectual as if he had been the single arbiter appointed by both parties.

30. If, when more than one arbiter shall have been appointed, and neither of them shall refuse or neglect to act fail to make as aforesaid, such arbiters shall fail to make their award within twenty-one days after the day on which the last of such arbiters shall have been appointed, or within such extended time as shall have been appointed for that purpose by both such arbiters under this act, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

31. The said arbiters or their oversman may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose, and take all evidence competent according to the law of Scotland.

32. All the expenses of any such arbitration and incident thereto, to be settled by the arbiters or oversman, as the case may be, shall be borne by the promoters of the undertaking, unless the arbiters or oversman shall award the same sum as or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own expenses incident to the arbitration; and in all cases the expenses of the arbiters or oversman, as the case may be, and of recording the decree arbitral or award in the books of the council and session, shall be borne by the promoters of the undertaking.

33. The arbiters shall make their decree arbitral or award in writing, and shall cause the same to be recorded in the books of council and session, or shall deliver the same to the promoters of the undertaking, to be by them recorded, and the said promoters shall, on demand, at their own expense, furnish an extract thereof from the said books to the other party to the arbitration; and extracts of decrees arbitral or awards shall bear faith in all courts and cases the same as the original writings, unless the originals be improven.

Award not to be set aside.

34. No award made with respect to any question referred to arbitration under the provisions of this or the special act, shall be set aside for irregularity or error in matter of form.

If arbitration or award not made within three months, to be settled by a jury.

35. If the party claiming compensation shall not, as hereinbefore provided, signify his desire to have the question of such compensation settled by arbitration, or if, when the matter shall have been referred to arbitration, the arbiters or their umpire shall for three months have failed to make their or his award, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Party claiming compensation exceeding 50*l.* may require a jury to be summoned.

36. But if any party entitled to any compensation in respect of any such lands or interest therein, exceeding fifty pounds as aforesaid, shall desire to have the amount of such compensation determined by a jury, it shall in like manner be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed by him; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose, then, within twenty-one days after the receipt of any such notice from any party so entitled, they shall, unless the question shall previously have been agreed to be settled by arbitration, present their petition to the sheriff to summon a jury for settling the same in the manner hereinafter provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any competent court.

Promoters before summoning a jury to give notice and offer compensation.

37. Before the promoters of the undertaking shall present their petition for summoning a jury for settling any case of disputed compensation, they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned; and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

Petition for summoning a jury to be addressed to the sheriff.

38. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury, the promoters of the undertaking shall present their petition to the sheriff to summon a jury for that purpose; and such petition shall, if the promoters be a company or corporation, be signed by the secretary

or proper officer or person authorized by such company or corporation, and if they be not a company or corporation, such petition shall be signed by the promoters, or any two of them if more than one.

39. Upon the receipt of such petition as aforesaid, the Sheriff to sheriff shall summon a jury of twenty-five indifferent summon persons, duly qualified to act as common jurymen for the jury. trial of civil causes in the court of session, to meet at a time and place to be named by the sheriff in the warrant for that purpose.

40. Not less than ten days' notice of the time and place Notice of of the inquiry shall be given in writing by the promoters inquiry. of the undertaking to the other party, or to his known agent.

41. Out of the jurors appearing upon such summons a Jury to be jury of thirteen persons shall be drawn by ballot; and if impan- a sufficient number of jurymen do not appear in obedience nelled. to such summons, the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges for cause against any of the jurymen; and each party may have three peremptory challenges.

42. The sheriff shall preside on the said inquiry; and Sheriff to the party claiming compensation shall be deemed the pur- preside. suer, and the proceedings at such trials shall be conducted in like manner as in criminal trials; and, if either party Jury may so request, the sheriff shall order the jury, or any seven view. or more of them, to view the place or matter in con- troversy.

43. If any person summoned and returned upon any Jurors not jury under this or the special act, whether common or appearing, special, do not appear, or if appearing he refuse to make or neglect oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfac- tion of the sheriff, forfeit a sum not exceeding ten pounds; and every such penalty shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of a civil cause in the court of session.

44. If either party so request in writing, the sheriff Sheriff may shall summon before him any person considered necessary summon to be examined as a witness touching the matters in question.

45. If any person duly summoned to give evidence Witnesses upon any such inquiry, and to whom a tender of his rea-making de-

fault, liable sonable expenses shall have been made, fail to appear at the time and place specified in the summons, without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness, refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds, and, in addition to the penalty hereby imposed, shall be subject to the same regulations, pains, and penalties as if such witness, having been duly summoned, had failed to appear, or having appeared, had refused to be examined in any other cause.

If claimant make default, the inquiry not to proceed.

Jury to be sworn by sheriff.

Jury to assess separately the sums to be paid for purchase of lands and for damage to other lands.

Verdict and judgment to be recorded.

Copies to be evidence.

46. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a valuator appointed by the sheriff in manner hereinafter provided.

47. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given, they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage ; and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

48. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict by a majority of their number separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which under the provisions herein contained, such party is entitled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special act, or any act incorporated therewith : provided always, that if the parties agree to dispense with such separation, the verdict may be returned for one sum.

49. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury ; and the verdict and judgment shall be signed by the sheriff, and being so signed, shall be kept by the clerk of the sheriff court among the records of that court ; and such verdicts and judgments shall be deemed records, and the same or official copies thereof shall be good evidence in all courts and

elsewhere ; and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence.

50 On every such inquiry before a jury, all the expenses of such inquiry shall be borne by the promoters of the undertaking, unless the verdict of the jury be given for the same or a less sum than the sum previously offered to be borne by the promoters of the undertaking, or unless the owner of or party interested in the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, in either of which cases, one half of the expenses of the promoters of the undertaking shall be defrayed by the owner of or party interested in the lands.

51. The expenses of any such inquiry shall, in case of difference, be settled by the sheriff on the application of either party ; and such expenses shall include all reasonable charges and expenses incurred in summoning, impanelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and agents, recording the verdict and judgment thereon, and otherwise incident to such inquiry, including the remuneration to the sheriff for his time and labour, and his reasonable travelling expenses, which remuneration for time and labour, exclusive of travelling expenses, shall be five guineas and no more for any inquiry as aforesaid, whether with or without a jury, unless such inquiry shall occupy more than one day or period of eight hours, in which case there shall be paid to the sheriff a sum of five guineas for each day or period of eight hours the inquiry may occupy, including the time necessarily occupied in travelling to and from the place of trial : provided always, that the time occupied in travelling shall not in reference to any inquiry be computed at more than two days ; and in all cases of inquiry as aforesaid before the sheriff, with or without a jury, the remuneration or expenses of the sheriff shall be borne by the promoters of the undertaking.

52. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such expenses be not paid to the party entitled to receive the same, they shall be recoverable by pointing and sale, and on application to the sheriff he shall issue his warrant accordingly ; and if any such expenses shall be payable by the owner of the lands, or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury.

*Purchase
of lands
otherwise
than by
agree-
ment.*

to such owner or party interested, or determined by the valuation of a valuator under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or, if such expenses shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by poinding and sale, and on application to the sheriff, he shall issue his warrant accordingly.

*Special jury
to be sum-
moned at
the request
of either
party.*

53. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have presented their petition to the sheriff; and for that purpose the promoters of the undertaking shall, by their petition to the sheriff, require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such petition, summon both the parties to appear before him, by themselves or their agents, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than five days from the service of such summons;) and at the place and time so appointed the sheriff shall proceed to nominate a special jury in the manner in which such juries shall be required by the laws for the time being in force to be nominated by the sheriff in other cases, and the sheriff shall appoint a day for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed in reducing special juries in the court of session.

*Deficiency
of special
jurymen
may be
supplied.*

54. The special jury on such inquiry shall consist of thirteen of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons, qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury; and such trial shall be attended in all respects with

the like incidents and consequences, and the like penalties shall be applicable as hereinbefore provided in the case of a trial by common jury.

55. Any other inquiry than that for the trial of which Other in- such special jury may have been struck and reduced as quires may aforesaid may be tried by such jury, provided the parties be tried by thereto respectively shall give their consent to such trial. such jury.

56. The purchase money or compensation to be paid Compensation for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such valuator as the sheriff shall nominate for that purpose, as hereinafter mentioned.

57. Upon application by the promoters of the under- Upon application taking to the sheriff, and upon such proof as shall be cation of satisfactory to him that any such party is, by reason of promoters, absence from the kingdom, prevented from treating, or sheriff to cannot after diligent inquiry be found, or that any such nominate a party failed to appear on such inquiry before a jury as valuator. aforesaid, after due notice to him for that purpose, such sheriff shall, by writing under his hand, nominate a valuator for determining such compensation as aforesaid, and such valuator shall determine the same accordingly, and shall annex to his valuation a declaration in writing, subscribed by him, of the correctness thereof.

58. Before such valuator shall enter upon the duty of Declaration making such valuation as aforesaid he shall, in the presence of such sheriff, make and subscribe the oath follow- to be made ing at the foot of such nomination; (that is to say,) by the valuator.

"I, A. B. do solemnly swear, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. So help me God. "A. B.

"Sworn and subscribed in the presence of . . ." And if any valuator shall corruptly make such oath, or having made such oath shall wilfully act contrary thereto, he shall be guilty of and incur the pains of perjury.

59. The said nomination and declaration shall be annexed Valuation, to the valuation to be made by such valuator, and shall &c., to be preserved together therewith, by the promoters of the produced undertaking, and they shall at all times produce the said on demand. valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expense to be borne by valuation. 60. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase money and compensation how to be estimated. 61. In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid regard shall be had not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special act, or any other act incorporated therewith.

Compensation may be apportioned among different parties. 62. On estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, the sheriff, arbiters, valuator, or jury, as the case may be, shall apportion the said compensation among the parties who may be interested in the said lands as joint owners or lessees, or as holding some security or burden or claim thereon or interest therein, and who shall have been parties to the said trial or arbitration or valuation: provided always, that nothing herein contained shall prevent any person having a separate interest from having the same separately tried.

Where compensation to absent party has been determined by a valuator, the party may have the same submitted to arbitration. 63. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a valuator, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands, or such interest therein as aforesaid, could not be found, or was absent from the kingdom, and if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he shall have applied to the court of session for payment or investment of the monies so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted to and settled by arbitration in the manner hereinbefore provided for settling disputes by arbitration.

Question to be submitted to the arbiters. 64. The question to be submitted to the arbiters in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum awarded, promoters to pay 65. If the arbiters shall decide that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making

of such decree arbitral, or award, or in default thereof, or deposit the same may be enforced by diligence, or recovered, with same with expenses, by action in any competent court. in 14 days.

66. If the arbiters shall determine that the sum so deposited was sufficient, the expenses of and incident to such of the arbitration, to be determined by the arbiters, shall be in Expenses discretion of the arbiters; but if the arbiters shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the expenses of and incident to the arbitration shall be borne by the promoters of the undertaking.

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

67. The purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, heir of entail, life-renter, married woman seised in her own right or entitled to terce or dower, or any other right or interest, husband, tutors, to 200*l.*, to curators, or other guardians for any infant, minor, lunatic, be depo- or idiot, fatuous or furious person, or for any person under any other disability or incapacity, judicial factor, trustee, bank. executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same, except under the provisions of this or the special act, or the compensation to be paid for any permanent damage to any such lands, shall, if it amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, to the intent that such monies shall be applied under the authority of the court of session, to some one or more of the following purposes; (that is to say)

In the purchase or redemption of the land tax, or the Application discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith on the same heirs, or for the same trusts or purposes, or affecting succeeding heirs of entail in any such lands, whether imposed and constituted by the entainer, or in virtue of powers given by the entail, or in virtue of powers conferred by any act of parliament;

In the purchase of other lands to be conveyed, limited, and settled upon the same heirs, and the like trusts and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such monies shall be paid in respect of any buildings taken under the authority of this or the special act,

*Applica-
tion of
compen-
sation.*

or injured by the proximity of the works, or in removing or replacing such buildings, or substituting others in their stead, in such manner as the said court shall direct ; or

In payment to any party becoming absolutely entitled to such money.

Order for
application,
and invest-
ment mean-
while.

68. Such money may be so applied as aforesaid upon application, an order of the court of session, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited ; and until the money can be so applied it shall be retained in the bank at interest, or shall be laid out and invested in the public funds or in heritable securities, and the interest, dividends, and annual proceeds thereof shall from time to time, under the like order, be paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Sums from
20*l.* to 200*l.*
to be depo-
sited in
bank, or
paid to
trustees.

69. If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the parties so entitled ; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, tutors, curators, judicial factors, or trustees ; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof, and of the trustees named for the purpose ; and the money so paid to such trustees, and the produce arising therefrom, shall, at the expense of the promoters of the undertaking, be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of court for that purpose.

Sums not
exceeding
20*l.* to be
paid to par-
ties.

70. If such money shall not exceed the sum of twenty pounds the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit ; or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, tutors, curators, judicial factors, or trustees of such persons.

All sums

71. All sums of money exceeding twenty pounds which

may be payable by the promoters of the undertaking, in payable respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid ; and it shall not be lawful for any contracting party, not entitled as aforesaid, to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands, or in lieu of bridges, tunnels, or other accommodation works, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in succession or expectancy : provided always, that it shall be in the discretion of the court of session or the said trustees, as the case may be, to allot to any life-renter or person holding for any other partial or qualified right or interest, for his own use, a portion of the sum so paid into the bank or to such trustees as aforesaid as compensation for any injury, inconvenience, or annoyance, which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith by reason of the taking of such lands and the making of the works.

72. Where any purchase money or compensation paid into the bank under the provisions of this or the special act shall have been paid in respect of any lease for lives or years, or any right or interest in lands less than the fee thereof, or of any reversion dependent on any such lease, or right or interest, it shall be lawful for the court of session, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, right, interest, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

73. If such money shall be laid out and invested in the purchase of lands to be held under entail, or under uses, trusts, intents, and purposes, it shall not be necessary to ingross verbatim in the titles to such new lands the provisions of the entail or other investiture of the said old lands, or to mention specifically the uses, trusts, intents, and purposes for and upon which the said new lands are to be held, but it shall be sufficient to state the dates of

Court of
direct ap-
plication of
money in
respect of
leases or
reversions
as they may
think just.

On the pur-
chase of
lands to be
entailed,
not neces-
sary to in-
sert the
provisions
verbatim.

Application of compensation.

executing and recording the deed or deeds containing the provisions and conditions subject to which, or the uses, trusts, intents, and purposes to, for, and upon which, the said old lands were held, and to declare that the said new lands shall be held subject to the same provisions and conditions, and to, for, and upon the like uses, trusts, intents, and purposes, and to record the title deed containing such general reference in the register of tailzies, sasines, or other proper record, according to the nature of such title deed, which the keepers of the said registers are hereby authorized and required to do without a special order to that effect : provided always, that upon the first occasion of completing titles to the said entailed estates, the lands acquired to the estate may be introduced into the titles then completed, after which they shall descend regularly as part and portion of the entailed estates.

Upon deposit being made, the owners of the lands to convey, or in default, the lands to vest in the promoters upon a nontarial instrument being executed.

74. Upon deposit in the bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking, under the provisions of this or the special act, or any act incorporated therewith, the owner of such lands, including in such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct ; and in default thereof, or if he fail to adduce a good title to such lands, it shall be lawful for the promoters of the undertaking, if they think fit, to expedite an instrument under the hands of a notary public, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made ; and such instrument shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein ; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by the sheriff, by a jury, or by arbiters, or by a valuation appointed by the sheriff, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking ; and as against such parties, and all parties on behalf of

whom they are hereinbefore enabled to sell and convey, *Application of compensation.*
the promoters of the undertaking shall be entitled to immediate possession of such lands; and such instrument, being registered in the register of sasines in manner hereinafter provided in regard to conveyances of lands, shall have the same effect as a conveyance so registered.

75. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse or is unable validly to convey such lands as directed by the promoters of the undertaking, or to discharge or obtain a discharge of any burden or incumbrance thereon which was not specially excepted from discharge, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear, on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands or any interest therein in the bank, to be placed, except in the cases herein otherwise provided for, to an account to be opened in the name of the parties interested in such lands (describing them, so far as the promoters of the undertaking can do), subject to the control and disposition of the court of session.

76. Upon any such deposit of money as last aforesaid being made, the cashier or other proper officer of such bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to expedite an instrument under the hands of a notary public, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such instrument shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against

Application of compensation.

such parties they shall be entitled to immediate possession of such lands ; and such instrument, being registered in the register of sasines in manner hereinafter directed in regard to conveyances of lands, shall have the same effect as a conveyance so registered.

Application of monies so deposited.

77. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said court of session may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or on heritable securities, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Parties in possession of lands to be deemed to be the owners until the contrary be shown.

78. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court ; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

In cases of money deposited in the bank the court may order the expenses to be paid by the promoters.

79. In all cases of monies deposited in the bank under the provisions of this or the special act, or any act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to feu or convey the lands in respect whereof the same shall be payable, or by reason of his refusal or inability to discharge or obtain a discharge of any burden on such lands which was not specially excepted from discharge, or by reason of the failure or neglect of any party to make out a good title to the land required, it shall be lawful for the court of session to order the expenses of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking ; (that is to say,) the expense of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such expenses as are herein otherwise provided for, and the expense of

the investment of such monies in government or real securities, and of the re-investment thereof in the purchase of other lands, and of re-entailing any of such lands, and incident thereto, and also the expense of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: provided always, that the expense of one application only for re-investment in land shall be allowed, unless it shall appear to the court of session that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the expenses of any such investments to be paid by the promoters of the undertaking.

Application of compensation.

And with respect to the conveyances of lands, be it enacted as follows:

Conveyances.

80. Feus and conveyances of lands so to be purchased as aforesaid may be according to the form in the schedules (A.) and (B.) respectively, to this act annexed, or as near thereto as the circumstances of the case will admit; which feus and conveyances, being duly executed, and being registered in the particular register of sasines kept for the county, burgh, or district in which the lands are locally situated, or in the general register of sasines for Scotland kept at Edinburgh, within sixty days from the last date thereof, which the respective keepers of the said registers are hereby authorized and required to do, shall give and constitute a good and undoubted right and complete and valid feudal title in all time coming to the promoters of the undertaking, and their successors and assigns, to the premises therein described, any law or custom to the contrary notwithstanding: provided always, that it shall not be necessary for the promoters of the undertaking to record in any register of sasines any feus or conveyances in their favour which shall contain a procuratory of resignation or precept of sasine, or which may be completed by infestment; and the title of the company under such last-mentioned feus or conveyances shall be regulated by the ordinary law of Scotland, until the said feus or conveyances, or the instruments of sasine thereon, shall have been recorded in a register of sasines.

Form of conveyances.

81. The expenses of all conveyances of lands shall be Expenses borne by the promoters of the undertaking; and such of convey-

ances to be expenses shall include all charges and expenses, incurred borne by on the part as well of the seller as of the purchaser, of all promoters. conveyances of any such lands, and of any interest therein, and of establishing the title to such lands, and all other reasonable expenses incident to the investigation of such title.

Expenses of conveyances may be taxed by the lord ordinary. 82. If the promoters of the undertaking and the party entitled to any such expenses shall not agree as to the amount thereof, such amount shall be ascertained and decerned for by the lord ordinary, on a summary petition presented to him by the party entitled to recover the same; and the promoters of the undertaking shall pay to the party entitled thereto what the said lord ordinary shall decree for or in respect of such expenses, or in default thereof, the same may be recovered in the same way as any other expenses payable under an order or decree of the court, or the same may be recovered by pointing and sale in the manner hereinbefore provided in other cases of expenses; and the expense of taxing such expenses shall be borne by the promoters of the undertaking, unless upon such taxation one sixth part of the amount of such expenses shall be disallowed, in which case the expenses of such taxation, and of or incident to the application to the lord ordinary, shall be borne by the party whose expenses shall be so taxed, and the amount thereof shall be ascertained by the said lord ordinary, and deducted by him accordingly in his judgment or decerniture.

Entry on Lands. And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows :

Promoters not to enter upon lands until purchase money be paid or deposited, unless for surveying, taking levels, or setting out the line. 83. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein : provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Promoters to be allowed to 84. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to,

or an award made or verdict given, for the purchase enter on money or compensation to be paid by them in respect of lands before such lands, it shall be lawful for the promoters of the purchase, undertaking to deposit in the bank by way of security, as on making hereinafter mentioned, either the amount of purchase deposit by money or compensation claimed by any party interested ^{way of secu-} in or entitled to sell and convey such lands, and who shall ^{rity and giv-} not consent to such entry, or such a sum as shall by a ^{ing bond.} valuator, appointed by the sheriff in the manner herein-before provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to, or enabled to sell and convey, and also, if required so to do, to give to such party a bond, under the hand of the secretary or proper officer or person authorized, if the promoters be a company or corporation, or if they be not a company or corporation, under the hand of the promoters, or any two of them if more than one, with two sufficient securities, to be approved of by the sheriff in case the parties differ, for a sum equal to the sum so to be deposited, for payment to such party, or for making a deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon at the rate of five pounds per centum per annum from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of ^{Upon mak-} security being made as aforesaid, and such bond being ^{ing deposit} delivered or tendered to such non-consenting party as ^{and giving} aforesaid, it shall be lawful for the promoters of the ^{bond, pro-} undertaking to enter upon and use such lands, without ^{motors may} having first paid or deposited the purchase money or ^{enter upon} compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken ^{lands.} by them under the provisions of this or the special act.

85. The money so to be deposited as last aforesaid shall ^{Deposit to} be paid into the bank, to be placed to an account to be ^{be paid into} opened in the name of the parties interested in or entitled ^{bank, and} to sell and convey the lands so to be entered upon, and ^{cashier to} who shall not have consented to such entry, subject to the ^{give a re-} control and disposition of the court of session; and upon ^{ceipt.} such deposit being made, the cashier or other proper officer of the bank shall give to the promoters of the under-

*Entry on
Lands.*

Money de-
posited to
remain as a
security,
and to be
applied un-
der the di-
rection of
the court.

If promo-
ters enter
upon lands
without
consent, be-
fore pay-
ment of the
purchase
money, to
forfeit 10*l.*
above da-
mage.

After con-
viction, to
forfeit 25*l.*
for every
day they
remain in
possession.

taking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

86. The money so deposited as last aforesaid shall remain in the bank by way of security to the parties whose lands shall so have been entered upon for the performance of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in the public funds or upon heritable securities, and accumulated; and upon the conditions of such bond being fully performed, it shall be lawful for the court of session, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or, if such conditions shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

87. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before the sheriff; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with expenses, by action in any competent court; provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bona fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may

have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

88. On the trial of any action for any such penalty as On trial, aforesaid, the decision of the sheriff, under the provision decision of hereinbefore contained, shall not be held conclusive as to sheriff not the right of entry on any such lands by the promoters of to be held the undertaking.

89. If in any case in which, according to the provisions In case of of this or the special act, or any act incorporated there- refusal to with, the promoters of the undertaking are authorized to deliver pos- enter upon and take possession of any lands required for session of the purposes of the undertaking, the owner or occupier of lands, pro- any such lands, or any other person, refuse to give up the pos- motors may ssession thereof, or hinder the promoters of the under- apply by petition to the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the under- sheriff. taking to apply by petition to the sheriff for possession of the same, and upon such application the sheriff may Upon such authorize and order possession of any such lands accord- application, ingly; and the expenses accruing by reason of such appli- sheriff may cation, to be settled and decreed for by the sheriff, shall order pos- be paid by the person wrongfully refusing to give or hin- session of dering possession; and the amount of such expenses shall such lands. be deducted and retained by the promoters of the under- taking from the compensation, if any, then payable by them to such party; or if no such compensation be pay- able to such party, or if the same be less than the amount of such expenses, then such expenses, or the excess thereof beyond such compensation, if not paid on demand, may be levied by pointing and sale, and the sheriff may issue his warrant accordingly.

90. And be it enacted, That no party shall at any time No party to be required to sell or convey to the promoters of the be required undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and to sell part of a house. convey the whole thereof.

And with respect to small portions of intersected land, *Intersected Lands.*
be it enacted as follows:

91. If any lands, not being situate in a town or built upon, shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special act, the pro- Owners of intersected lands may require promoters to purchase the same.

motors of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

Promoters may insist on purchase of intersected lands where expense of bridges, &c. exceeds the value.

92. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special act, or any act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land; and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the sheriff, or the jury, or the arbiters, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

Disputes as to value to be ascertained as provided for in cases of disputed compensation.

Common Lands.

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Promoters may convene a meeting by advertisement of parties entitled.

93. The promoters of the undertaking may convene a meeting of the parties entitled to any rights of property or servitude, or other rights, in or over such lands, to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the church of the parish where

Notice of meeting to be affixed

such meeting is intended to be held, or, if there be no such on parish church, some other place in the neighbourhood to which church notices are usually affixed; and if such lands be part of a barony a like notice shall be given to the superior or baron.

94. The meeting so called may appoint a committee, Meeting so not exceeding five in number, of the parties entitled to be called to any such rights; and at such meeting the decision of the appoint a majority of the persons entitled to such rights present shall bind the minority and all absent parties; but such meeting shall not be effectual for the purpose unless five at least of the parties entitled attend the same, if there be so many as five in all of the parties entitled to such rights.

95. It shall be lawful for the committee so chosen to Committee enter into an agreement with the promoters of the under- so chosen taking for the compensation to be paid for the extinction to agree of such rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein, and all such parties shall be bound by such agree- ment, and it shall be lawful for such committee to receive the compensation so agreed to be paid; and the receipt of such committee, or of any three of them, for such compen- sation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests; but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compen- sation, nor shall they be liable for the misapplication or nonapplication thereof.

96. If upon such committee being appointed they shall Disputes to fail to agree with the promoters of the undertaking as to be settled the amount of the compensation to be paid as aforesaid, as in other the same shall be determined as in other cases of disputed cases. compensation, the said committee being deemed and held to be the proprietors of the said rights, with reference to all proceedings for ascertaining the value thereof.

97. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties en- mittee be titled to such rights shall take place, or if, taking place, appointed, such meeting fail to appoint such committee, the amount to be deter- mined by a valuator, to be appointed by the sheriff as hereinbefore provided in the case of parties who cannot be found.

98. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee, then deposit in the bank in the manner provided in the posit of like case of the compensation which shall have been agreed upon or determined in respect of such rights, and it shall be payable

to commoners, promoters may execute a deed poll, and thereupon the lands to vest.

be lawful for the promoters of the undertaking, if they think fit, to execute a disposition, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking freed and discharged from all such rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the court of session, by an order made upon petition, to order payment of the money so deposited as aforesaid, and to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Lands in Mortgage.

Promoters may purchase or redeem heritable securities,

And with respect to lands subject to any security by real lien, wadset, heritable bond, redeemable bond of annuity, or other right in security, be it enacted as follows :

by paying principal, interest, and expenses, with six months' additional interest, or may give notice to pay off principal and interest at end of six months.

99. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of any holder of any security upon such lands the whole or part of which may be required for the purposes of the special act, and that whether such promoters shall have previously purchased the right to such lands under burden of the security thereon or not, and whether the holder of such security be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such security or not, and whether such security affect such lands solely, or jointly with any other lands not required for the purposes of the special act; and in order thereto the promoters of the undertaking may pay or tender to the holder of such security the principal and interest due on such security, together with his expenses and charges, if any, and also six months' additional interest, and thereupon such holder shall immediately convey his interest in the lands comprised in such security to the promoters of the undertaking, or as they shall direct; or the promoters of the undertaking may give notice in writing to such holder that they will pay off the principal and interest due on such security at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the lands under burden of such security shall have given six months' notice of his intention to redeem the same, then, at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the holder of such security of the principal money thereon due, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his expenses and charges, if any, such holder shall convey or discharge his interest in the lands comprised in

such security to the promoters of the undertaking, or as they shall direct.

100. If, in either of the cases aforesaid, upon such payment or tender, any holder of such securities shall fail to convey or discharge his interest therein as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this act in like cases, the principal and interest, together with the expenses, if any, due on such security, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to expedite an instrument under the hands of a notary public, duly stamped, and to register the same in the manner herein-before provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the holder of the security, if any such be made, all the estate and interest of such holder, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such holder were himself entitled to such possession.

101. If any such lands subject to such security as aforesaid shall be of less value than the principal, interest, and expenses secured thereon, the value of such lands, or the value of compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the holder of such security and the party claiming or entitled to the lands under burden on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the holder of the security, in satisfaction of his claim, so far as the same will extend; and upon payment or tender thereof such holder shall, at the expense of the promoters of the undertaking, dispone and assign his debt, so far as paid, and his security, and all his interest in such lands, to the promoters of the undertaking, or as they shall direct, and thereupon the party claiming or entitled to the said lands under burden of the security shall cease to be interested in or have any right thereto, or to any part thereof.

102. If upon such payment or tender as aforesaid being made, any holder of such security fail so to convey his when re-

fused on tender, to be deposited in the bank.

interest therein, or to adduce a good title thereto to the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank in the manner provided by this act in like cases; and every such payment or deposit shall be accepted by the holder of the security in satisfaction of his claim, so far as the same will extend, and shall be a full discharge of the lands from all money due thereon; and it shall be lawful for the promoters of the undertaking to expedite an instrument under the hands of a notary public, duly stamped, and to register the same in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such right and interest as were then vested in the holder of the security, or any person in trust for him, or in the party claiming or entitled to the lands under burden of the security, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof; nevertheless, all rights and remedies possessed by the holder of such security for recovering payment of his debt, or the residue thereof, (as the case may be,) or the interest thereof respectively, and all expenses, shall remain in force as a claim against the grantor of such security, and against all other parties bound for the same, but not as a claim on the said lands, or against the promoters of the undertaking.

If part only of lands under security be taken, the value to be settled by agreement, or determined as in other cases of disputed compensation.

103. If a part only of any such lands subject to any security as aforesaid be required for the purposes of the special act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the holder of the security shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to discharge the part so required, and if the promoters of the undertaking be unwilling to advance the debt on an assignment thereto, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof, or otherwise, shall be settled by agreement between the holder of the security and the party entitled to the land under burden of the security on the one part, and the promoters of the undertaking on the other; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the holder of the security, in satisfaction of his debt, so far as the same will extend, and thereupon such holder shall convey or discharge to them,

or as they shall direct, all his interest in such lands the *Lands in value* whereof shall have been so paid, and the party *Mortgage* — claiming or entitled to the said lands under burden of the security shall cease to be interested in or have any right thereto or to any part thereof; and a memorandum of Amount what shall have been so paid shall be endorsed on the paid to be deed or instrument creating such security, and shall be endorsed signed by the holder thereof; and a copy of such memo- on deed randum shall at the same time (if required) be furnished creating by the promoters of the undertaking, at their expense, to such se- the party entitled to the lands under burden of the curity. security.

104. If upon payment or tender to any holder of such Money security of the amount of the value or compensation so when re-agreed upon or determined, such holder shall fail to con-fused on vey or discharge to the promoters of the undertaking, or tender to as they shall direct, his interest in the lands in respect of be deposit which such compensation shall so have been paid or ed in the tendered, or if he shall fail to adduce a good title thereto, bank. it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank in the manner provided by this act in the case of monies required to be deposited in such bank; and such payment or deposit shall be accepted by the holder of such security in satisfaction of his claim, so far as the same will extend, and shall be a full discharge of the portion of the lands so required from all money due thereon, and shall bar the claim of the party claiming or entitled to the said lands under burden of the security; and it shall be lawful for the promoters of the undertaking, if they think fit, to expedite an instrument under the hands of a notary public, duly stamped, and to register the same in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such right and interest as were then vested in the holder of such security, or any person in trust for him, and in case such holder were himself entitled to such possession, they shall be entitled to immediate possession thereof; nevertheless, every such Rights of holder shall have the same powers and remedies for re-holders of recovering or compelling payment of his claim, or the securities residue thereof, (as the case may be,) and the interest against re-sidue of thereof respectively, upon and out of the residue of the lands subject to such security, or the portion thereof not lands to re-required for the purposes of the special act, as he would main in otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such security.

If sums secured paid off before the stipulated time, promoters to pay expenses incidental to re-investment.

Compensation in respect of loss of interest.

Lands subject to rent charges.

Company to continue the payment of feu duties, &c.

Discharge of lands from such charge.

105. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to securities, if in the deed or instrument creating the same a time shall have been limited within which the holder of the security shall not be obliged to receive payment of the principal money thereby secured, and under the provisions hereinbefore contained the holder of the security shall have been required to accept payment of his claim, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to the holders of the security, in addition to the sum which shall have been so paid off, all such expenses as shall be incurred by him in respect of or which shall be incidental to the re-investment of the sum so paid off; such expenses, in case of difference to be taxed, and payment thereof enforced, in the manner herein provided with respect to the expenses of conveyances.

106. If the rate of interest secured by such deed be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, the holder of such security shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his claim being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid, the promoters of the undertaking shall not be entitled, as against such holder, to possession of the lands under the provision hereinbefore contained.

And with respect to any lands which shall be charged with any feu duty, ground annual, casualty of superiority, or any rent or other annual or recurring payment or incumbrance not hereinbefore provided for, be it enacted as follows:

107. It shall be lawful for the promoters of the undertaking to enter upon and continue in possession of such lands, without redeeming the charges thereon, provided they pay the amount of such annual or recurring payment when due, and otherwise fulfil all obligations accordingly, and provided they shall not be called upon by the party entitled to the charge to redeem the same.

108. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special act, respecting the consideration to be paid for the discharge of such lands therefrom, or

from the portion thereof affecting the lands required for the purposes of the special act, the same shall be determined as in other cases of disputed compensation.

109. If part only of the lands charged with any such Discharge feu duty, ground annual, casualty of superiority, or any of part of rent, payment, or incumbrance, be required to be taken lands from for the purposes of the special act, the apportionment of charge. any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, the same shall be settled by the sheriff; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to discharge therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

110. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any refusal to such charge as aforesaid, such party shall execute to the discharge, promoters of the undertaking a discharge thereof; and if money to be he fail so to do, or if he fail to adduce a good title to such deposited in charge, it shall be lawful for them to deposit the amount the bank. of such compensation in the bank in the manner hereinbefore provided in like cases; and also, if they think fit, to expedite an instrument under the hands of a notary public, duly stamped, and to register the same in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon the feu duty, ground annual, casualty of superiority, rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

111. If any such lands be so discharged from any such Charge to charge or incumbrance, or portion thereof, to which they continue were subject jointly with other lands, such last-mentioned on lands lands shall alone be charged with the whole of such not taken. charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and upon any such charge or portion of Promoters charge being so discharged, the promoters of the under- to execute taking, if required so to do, shall execute and grant in due deed, de- form a probative deed or instrument, declaring what part claring of the lands originally subject to such charge shall have what part

of lands
have been
purchased.

been purchased by virtue of the special act, and if the lands be discharged from part of such charge, what proportion of such charge shall have been discharged, and how much thereof continues payable, or if the lands so required shall have been discharged from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such deed or instrument shall be made and executed at the expense of the promoters of the undertaking, and shall be competent evidence in all courts and elsewhere of the facts therein stated.

Leases.

—
If part only
of lands
under lease
taken, the
rent to be
apportioned.

And with respect to lands subject to leases, be it enacted as follows:

112. If any lands shall be comprised in a lease or missive of lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease or missive of lease shall be apportioned between the lands so required and the residue of such lands, and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by the sheriff; and after such apportionment, the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease or missive of lease; and all the obligations, conditions, and agreements of such lease or missive of lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act, in the same manner as they would have been in case such part only of the land had been included in the lease or missive of lease.

Lessees to
be compen-
sated by
promoters.

113. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Tenants for
a year, &c., 114. If any such lands shall be in the possession of
any person having no greater interest therein than as

tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by any incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by the severing of the lands held by him, or otherwise injuriously affecting the same, and the amount of such compensation shall be determined by the sheriff, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special act.

115. If any party, having a greater interest than as tenant for a year or from year to year, claim compensation greater in respect of any unexpired term or interest under any lease, missive of lease, or grant of any such lands, the claimed promoters of the undertaking may require such party to produce the lease, missive of lease, or grant in respect of which such claim shall be made, or other legal evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease, missive of lease, or grant, or other legal evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

116. And be it enacted, That the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed, not after the expiration of three years from the passing of the special act.

And with respect to interest in lands which have by mistake been omitted to be purchased, be it enacted as follows:

117. If at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special act, or any act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through

Limit of time for compulsory purchase.

Promoters may purchase interests in lands the purchase whereof

whereof

have been omitted by mistake or inadvertency have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided, within

Within six months after notice or recognition of right of claimant promoters to pay compensation.

mistake or inadvertency have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided, within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed, then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such profits or interest may be recoverable in law; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

Value of such lands to be estimated without regard to improvements made by promoters.

118. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any profits thereof, the jury, or arbiters, or sheriff, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters to pay the expenses of litigation as to such lands of right determined in favour of claimant.

119. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge, shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such

expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

And with respect to lands acquired by the promoters of *Sale of the undertaking*, under the provisions of this or the special *superfluous act*, or any act incorporated therewith, but which shall not *lands*. be required for the purposes thereof, be it enacted as follows :

120. Within the prescribed period, or if no period be prescribed, within ten years after the expiration of the wanted time limited by the special act for the completion of the be sold, or works, the promoters of the undertaking shall absolutely in default sell and dispose of all such superfluous lands in such manner as they may deem most advantageous, and apply the purchase money arising from such sales to the purposes of the special act, and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto in proportion to the extent of their lands respectively adjoining the same.

121. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon, or be used for building purposes, first offer to sell the same to the owner of the person then entitled to the lands (if any) from which lands from the same were originally severed ; or if such person refuse to purchase the same, or cannot, after diligent inquiry, be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands ; and where more than one such person shall be entitled to such right of pre-emption, such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

122. If any such persons be desirous of purchasing such lands, then, within six weeks after such offer of sale, they shall signify their desire in that behalf to the promoters of the undertaking ; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting, in respect of the lands included in such offer, shall cease ; and a declaration in writing, Declaration made before the sheriff by some person not interested in the matter in question, stating that such offer was made, and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the such offer persons entitled to the right of pre-emption were out of was made.

the country, or could not, after diligent inquiry, be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Differences
as to price
to be set-
tled by ar-
bitration.

123. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the expenses of such arbitration shall be in the discretion of the arbiters.

Upon pay-
ment or
tender of
purchase
money,
lands to be
conveyed to
the pur-
chasers.

124. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid, they shall convey such lands to the purchasers thereof by deed, under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation, under the hands of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him, and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking, as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Effect of
word "dis-
pone" in
convey-
ances of
land by
promoters.

125. And be it enacted, That in every conveyance of lands to be made by the promoters of the undertaking under this or the special act the word "dispone" shall operate as a clause of absolute warrandice by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, to the respective disdonees therein named, and the successors, heirs, executors, administrators, and assigns of such disdonees, according to the quality or nature of such conveyances, and of the estate or interest therein expressed to be thereby conveyed, except so far as the same shall be restrained or limited by express words contained in such conveyance.

Superiori-
ties not to
be affected.

126. And be it enacted, That the rights and titles to be granted in manner herein mentioned in and to any lands taken and used for the purposes of this act shall, unless otherwise specially provided for, in nowise affect or diminish the right of superiority in the same, which shall remain entire in the person granting such rights and titles; but in the event of the lands so used or taken being a part or portion of other lands held by the same owner under the same titles, the said company shall not be liable for any *feu* duties or casualties to the superiors thereof, nor shall

the said company be bound to enter with the said superiors : provided always, that before entering into possession of any lands, full compensation shall be made to the said superiors for all loss which they may sustain by being deprived of any casualties, or otherwise by reason of any procedure under this act.

127. And be it enacted, that if the promoters of the undertaking become possessed, by virtue of this or the special act, or any act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate or prison assessment, they shall from time to time, until the works shall be completed and assessed to such land tax and poor's rate and prison assessment, be liable to make good the deficiency in the several assessments for land tax and poor's rate and prison assessment by reason of such lands having been taken or used for the purposes of the work ; and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special act ; and on demand of such deficiency the promoters of the undertaking or their treasurer shall pay all such deficiencies to the collector of the said assessments respectively ; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so, in accordance with the powers in that behalf given by the acts for the redemption of the land tax.

And with respect to the giving of notices, be it enacted as follows :

128. Any summons or notice, or any writ or other proceeding at law or equity required to be served upon the promoters of the undertaking, may be served by the same upon the being left at or transmitted through the post, directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given personally, or transmitted through the post, directed to the secretary, or in case there be no secretary, then by being given to the solicitor of the said promoters.

129. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action ; and if no such tender shall have been made, it shall be lawful for the defendant, by leave of the court where such action shall be

pending, at any time before the record is closed, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defenders are allowed to pay money into court.

Recovery of Penalties. And with respect to the recovery of forfeitures, penalties, and expenses, be it enacted as follows :

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Penalties not otherwise provided for may be summarily recovered before the sheriff or two justices.

130. Every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before the sheriff or two justices ; and on complaint being made to any sheriff or justice he shall issue an order requiring the party complained against to appear before himself, if the order be issued by a sheriff, or before two or more justices, if the order be issued by a justice, at a time and place to be named in such order ; and every such order shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode ; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such order, it shall be lawful for any sheriff or two justices to proceed to the hearing of the complaint ; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such sheriff or justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such expenses attending the conviction as such sheriff or justices shall think fit.

Penalties may be levied by poinding and sale.

131. If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such expenses as aforesaid, be not paid, the amount of such penalty and expenses may be levied by poinding and sale, and such sheriff or justices shall issue his or their warrant of poinding and sale accordingly.

Sums not exceeding 20*l.* may be recovered by poinding and sale of goods of treasurer.

132. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by poinding and sale of the goods of the treasurer of the said promoters, and the sheriff, on application, shall issue his warrant accordingly ; but no such poinding and sale shall be executed against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence ; and if such treasurer pay any money under *such poinding and sale as aforesaid*, he may retain the

amount so paid by him, and all expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or the promoter may sue the promoters of the undertaking for the same.

133. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the &c., how to nature of penalty, expenses, or otherwise, is directed to be levied by poinding and sale, such sum of money shall be levied by poinding and sale of the goods and effects of the party liable to pay the same, and the overplus arising from the sale of such goods and effects, after satisfying such sum of money, and the expenses of the poinding and sale, shall be returned, on demand, to the party whose goods shall have been seized.

134. No poinding and sale made by virtue of this or the special act, or any act incorporated therewith, shall not be deemed unlawful, nor shall any party making the same be deemed a trespasser or wrong-doer, on account of any defect or want of form in the summons, conviction, warrant, or other proceeding relating thereto, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action before the sheriff court.

135. The sheriff or justices by whom any such penalty shall be imposed, where the application thereof is not otherwise provided for, may award not more than one-half thereof to the informer, and shall award the remainder to the Kirk session, or treasurer or collector of the funds for the poor, of the parish in which the offence shall have been committed, for the benefit of the poor of such parish.

136. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before the sheriff or justices, unless the complaint respecting such offence shall have been made before such sheriff or some justice within six months next after the commission of such offence.

137. The sheriff or justice or justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (C.) to this act annexed.

138. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by suspension or otherwise into any superior court.

Power of appeal from sheriff substitute to sheriff.

139. In all cases which may come before any sheriff substitute under this or the special act, or any act incorporated therewith, in which written pleadings shall have been allowed, and a written record shall have been made up, and where the evidence which has been led by the parties shall have been reduced to writing, but in no other case whatever, it shall be competent for any of the parties thereto, within seven days after a final judgment shall have been pronounced by such sheriff substitute, to appeal against the same to the sheriff of the county, by lodging a minute of appeal with the sheriff clerk of such county or his depute; and the said sheriff shall thereupon review the proceedings of the said sheriff substitute, and whole process, and, if he think proper, hear the parties *vivâ voce* thereon, and pronounce judgment; and such judgment shall in no case be subject to review by suspension or ad- vocation, or by reduction on any ground whatever.

Parties allowed to appeal from justices to quarter sessions, on giving security.

140. If any party shall feel aggrieved by any determination or adjudication of any justice or two or more justices, with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make such order as they think reasonable.

141. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable, and they may make such order concerning the expenses, both of the adjudication and of the appeal, as they may think reasonable.

Access to special act. And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows:

142. The company shall at all times, after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one county, shall also within the space of such six months deposit in the office of each of the sheriff clerks of the several counties into which the works shall extend, a copy of such special act, so printed as aforesaid; and the said sheriff clerks shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present majesty, intituled, *An act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either house of parliament.*

Copies of
special act
to be kept
at principal
office and
deposited
with sheriff
clerks.

143. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special company act, they shall forfeit twenty pounds for every such failing to offence, and also five pounds for every day afterwards keep and during which such copy shall be not so kept or deposited.

*7 W. 4. &
1 Vict. c. 83.*

144. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of parliament.

*Act
may be
amended or
repealed.*

SCHEDULES referred to in the foregoing Act.

A.—*Form of Conveyance.*

I of in consideration of the sum of paid to me [or, as the case may be, into the bank (or to A.B. of and C.D. of two trustees appointed to receive the same)], pursuant to an act passed, &c., intituled, &c., by the [here name the company], incorporated by the said act, do hereby sell, alienate, dispone, convey, assign, and make over from me, my heirs and successors, to the said company, their successors and assigns, for ever, according to the true intent and meaning of the said act, all [describing the premises to be conveyed], together with all rights and pertinents thereto belonging, and all such right, title, and interest in and to the same as I and my foressaids

*A.
Form of
conveyance*

Schedules. are or shall become possessed of, or are by the said act empowered to convey. [Here insert the conditions (if any) of the conveyance, and registration clause for preservation and diligence, and a testing clause, according to the form of the law of Scotland.]

B. *B.—Form of Conveyance in consideration of Feu Duty or Rent-charge.*

Form of conveyance in consideration of feu duty or rent charge. I of in consideration of the feu duty or rent to be paid to me, my heirs and assigns, as hereinafter mentioned, by the [here name the company], established and incorporated by virtue of an act passed, &c., intituled, &c., do hereby dispone, convey, and make over from me, my heirs and successors, to the said company, their successors and assignees, for ever, according to the true intent and meaning of the said act, all [describing the premises to be conveyed], together with all rights and pertinents thereunto belonging, and all my right, title, and interest in and to the same and every part thereof, they the said company, their successors and assignees, yielding and paying unto me, my heirs and assignees, one clear annual feu duty or rent of by equal half-yearly portions henceforth on the [stating the days. Here insert conditions of the conveyance (if any,) and insert a registration clause for preservation and diligence, and a testing clause, according to the form of the law of Scotland].

C. *C.—Form of Conviction before*
Form of conviction before sheriff or justices. to wit.
 Be it remembered, That on the day of in the year of our Lord A.B. is convicted before me C., the sheriff [or before us D., E., two of her majesty's justices of the peace] for the county of [here describe the offence generally, and the time and place when and where committed], contrary to the [here name the special act]. Given under my hand [or under our hands], the day and year first above written.

C.
D.
E.

8 and 9 VICT. cap. 33.

An Act for consolidating in one Act certain provisions usually inserted in Acts authorizing the making of Railways in Scotland.

[21st July, 1845.]

WHEREAS it is expedient to comprise in one general act Preamble. sundry provisions usually introduced into acts of parliament authorizing the construction of railways in Scotland, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves : and whereas a bill is now pending in parliament, intituled, An Act for 8 Vict. c.19. consolidating in one act certain provisions usually inserted in acts authorizing the taking of lands for undertakings of a public nature in Scotland, and which is intended to be called "The Lands' Clauses Consolidation (Scotland) Act, 1845."

1. Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords of this act spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, ^{confined to future rail-}ways. that the provisions of this act shall apply to every railway in Scotland, which shall by any act which shall hereafter be passed, be authorized to be constructed, and this act shall be incorporated with such act ; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith, as forming one act.

And with respect to the construction of this act, and *Interpretations in other acts to be incorporated therewith, be it enacted as this act.*

2. The expression, "the special act," used in this act, shall be construed to mean any act which shall be here-^{"Special act."} after passed authorizing the construction of a railway, and with which this act shall be so incorporated as aforesaid ; and the word "prescribed," used in this act in reference "Prescribed to any matter herein stated, shall be construed to refer to ed." such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such

word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used ; and the expression "the lands" shall mean the lands which shall by the special act be authorized to be taken or used for the purposes thereof ; and the expression "the undertaking" shall mean the railway and works, of whatever description, by the special act authorized to be executed.

Interpretations in this and the special act.

Number.	Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number :
Gender.	Words importing the masculine gender only shall include females :
" Lands."	The word "lands" shall include lands, houses, tenements, and heritages of any tenure :
" Lease."	The word "lease" shall include a missive or an agreement for a lease :
" Toll."	The word "toll" shall include any rate or charge or other payment payable under the special act, for any passenger, animal, carriage, goods, merchandize, articles, matters, or things conveyed on the railway :
" Month."	The word "month" shall mean calendar month :
" Lord Ordinary."	The "lord ordinary" shall mean the lord ordinary of the court of session in Scotland officiating on the bills in time of vacation, or the junior lord ordinary if in time of session, as the case may be :
" Oath."	The word "oath" shall include affirmation in the case of quakers, or other declaration or solemnity lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :
" County."	The word "county" shall include any ward or other like division of a county :
" Sheriff."	The word "sheriff" shall include the sheriff substitute :
" Justice."	The word "justice" shall mean justice of the peace acting for the county, city, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, or place, shall mean a justice acting for the county, city, or place, where any part of such lands shall be situate, and who

shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall "Two justices" be understood to mean two or more justices assembled and acting together:

Where under the provisions of this or the special act "Owner." any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special act, or any act incorporated therewith, would be enabled to sell and convey lands to the company:

The expression "the bank" shall mean any one of the "The incorporated or chartered banks in Scotland : bank."

The expression "the company" shall mean the company or party which shall be authorized by the special act to construct the railway :

The expression "the railway" shall mean the railway "The rail-and works by the special act authorized to be constructed :

The expression "the Board of Trade" shall mean the "Board of lords of the committee of her majesty's privy council Trade." appointed for trade and foreign plantations.

4. And be it enacted, That in citing this act in other Short title acts of parliament, and in legal instruments, it shall be of this act. sufficient to use the expression "The Railways' Clauses Consolidation (Scotland) Act, 1845."

5. And whereas it may be convenient, in some cases, to incorporate with acts hereafter to be passed some portion which only of the provisions of this act; be it therefore enacted, That, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses of this act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act, in the words introductory to the enactment with respect to such matter,) shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

And with respect to the construction of the railway and the works connected therewith, be it enacted as follows : *Construction of railway.*

6. In exercising the power given to the company by the special act to construct the railway, and to take lands

The construction of the railway to be subject to the provisions of this act and the Lands' Clauses Consolidation (Scotland) Act.

for that purpose, the company shall be subject to the provisions and restrictions contained in this act and in the said Lands' Clauses Consolidation (Scotland) Act ; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by this or the special act, or any act incorporated therewith, vested in the company ; and, except where otherwise provided by this or the special act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands' Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof ; and all the provisions of the said last-mentioned act shall be applicable to determine the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

Errors and omissions in plans, &c., mentioned in special act, may be corrected by sheriff.

7. If any omission, mis-statement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference mentioned in the special act, or in the schedule to the special act, it shall be lawful for the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, to apply to the sheriff for the correction thereof ; and if it shall appear to such sheriff that such omission, mis-statement, or erroneous description arose from mistake, he shall certify the

Certificate of sheriff to state particulars of such omission, and to be deposited with sheriff clerks, schoolmasters, and town-clerks.

same accordingly, and shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been mis-stated or erroneously described ; and such certificate shall be deposited in the office of the principal sheriff clerk in every county in which the lands affected thereby shall be situate, and shall also be deposited with the schoolmasters of the several parishes (or, in royal burghs, with the town clerk), in which the lands affected thereby shall be situate ; and such certificate shall be kept by such sheriff clerks, schoolmasters, and other persons respectively along with the other documents to which they relate ; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate ; and it shall be lawful for the company to make the works in accordance with such certificate.

Works not to be pro-

8. It shall not be lawful for the company to proceed in the execution of the railway unless they shall have pre-

viously to the commencement of such work deposited in the office of the principal sheriff clerk in every county in or through which the railway is intended to pass a plan and section of all such alterations from the original plan and section as shall have been approved of by parliament, on the same scale and containing the same particulars as the original plan and section of the railway, and shall also have deposited with the schoolmasters of the several parishes (or, in royal burghs, with the town clerk), in or through which such alterations shall have been authorized to be made copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

9. The said sheriff clerks, schoolmasters, and town Sheriff clerks shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and to receive shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an act passed in the first year of the reign of her present Majesty, intituled, An act to compel clerks &c., and of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either house of parliament.

10. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such sheriff clerk in Scotland, which certificate such sheriff clerk shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

11. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line described in the section approved of by parliament, and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town, village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or in case any street or public highway shall be affected by such deviation, then the same shall not be made without the consent of the trustees or commissioners having the control of such street or public highway, or, if there be no such trustees or commissioners, without the consent of the sheriff, or without the consent of the trustees or commis-

- Company may lower embankments or viaducts.** sioners for any public sewers, or the proprietors of any canal, navigation, gas-works, or water-works, affected by such deviation: provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by act of parliament be left for roads, streets, or canals passing under the same: provided also, that notice of every application to the sheriff for the purpose of considering the matter shall, fourteen days previous to such application, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.
- Notice of application to sheriff.**
- Public notice to be given previous to making greater deviations.** 12. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicant, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation, or to authorize the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade; and after any such certificate shall have been given by the Board of Trade it shall not be lawful for the company to make such deviation, except in conformity with such certificate.
- Owners of adjoining lands may appeal to the Board of Trade against such deviations.** 13. Where in any place it is intended to carry the rail-way on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is in-
- Viaducts, &c.** to be made as marked on deposited plans.

tended to be made shall consent that the same shall not be so made.

14. It shall not be lawful for the company to deviate Limiting from or alter the gradients, curves, tunnels, or other deviations engineering works described in the said plan or section, from works except within the following limits, and under the following on plan. conditions ; (that is to say,)

Subject to the above provisions in regard to altering Inclination levels, it shall be lawful for the company to diminish or gradients the inclination or gradients of the railway to any of railway. extent, and to increase the said inclination or gra- dents as follows ; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest ; and in gra- dents exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid :

It shall be lawful for the company to diminish the Radius of radius of any curve described in the said plan to any curves. extent which shall leave a radius of not less than half a mile, or to any further extent authorized by such certificate as aforesaid from the Board of Trade :

It shall be lawful for the company to make a tunnel, Tunnels not marked on the said plan or section, instead of a and via- cutting, or a viaduct instead of a solid embankment, ducts. if authorized by such certificate as aforesaid from the Board of Trade.

15. It shall be lawful for the company to deviate from Limits of the line delineated on the plans so deposited, provided that deviation no such deviation shall extend to a greater distance than from line the limits of deviation delineated upon the said plans, nor marked on to a greater extent in passing through a town than ten yards. yards, or elsewhere to a greater extent than one hundred yards from the said line, and that the railway by means of such deviation be not made to extend into the lands of Deviation any person, whether owner, lessee, or occupier, whose not to ex- name is not mentioned in the books of reference, without tend into the previous consent in writing of such person, unless the lands of name of such person shall have been omitted by mistake, persons not and the fact that such omission proceeded from mistake mentioned shall have been certified in manner herein or in the special in book of act provided for in cases of unintentional errors in the said book of reference.

16. Subject to the provisions and restrictions in this Company

may execute works. and the special act, and any act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, hereinafter mentioned, to execute any of the following works; (that is to say,)

Construct inclined planes, &c. They may make or construct, in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railroads, or tramroads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans, or mentioned in the said books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences, as they think proper;

Alter course of rivers &c. They may alter the course of any rivers not navigable, canals, brooks, streams, or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper;

Make drains, &c. They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway;

Erect warehouses, &c. They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences, as they think proper;

Alter and repair works, and do other acts. They may from time to time alter, repair, or discontinue the beforementioned works or any of them, and substitute others in their stead; and

They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway:

Company to do as little damage as can be, and give compensation. Provided always, that in the exercise of the powers by this or the special act granted, the company shall do as little damage as can be, and shall make full satisfaction, in manner herein and in the special act, and any act incorporated therewith, provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers.

Works on 17. It shall not be lawful for the company to construct

on the shore of the sea, or of any creek, bay, arm of the shore sea, or navigable river communicating therewith, where of the sea, and so far up the same as the tide flows and reflows, any &c., not to work, or to construct any railway or bridge across any be con- creek, bay, arm of the sea, or navigable river, where and without the so far up the same as the tide flows and reflows, without authority of the previous consent of her majesty, her heirs, and suc- commissioners of woods, cessors, to be signified in writing under the hands of two of the commissioners of her majesty's woods, forests, land revenues, works, and buildings, and of the lord high admiral of the United Kingdom of Great Britain and Ireland, and of the admiralty. or the commissioners for executing the office of the lord high admiral aforesaid for the time being, to be signified in writing under the hand of the secretary of the admiralty, and then only according to such plan and under such restrictions and regulations as the said commissioners of her majesty's woods, forests, land revenues, works, and buildings, and the said lord high admiral, or the said commissioners, may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall have been constructed, it shall not be lawful to be for the company at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents or approvals; and if any such work, railway, or bridge shall be commenced or completed contrary to the provisions of this act, it shall be lawful for the said commissioners of her majesty's woods, forests, land revenues, works, and buildings, or the said lord high admiral, or the said commissioners for executing the office of lord high admiral, to abate and remove the same and to restore the site thereof to its former condition, at the costs and charge of the company; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company.

18. It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of any of the watercourses, water pipes, position of or gas pipes belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and inconvenience to such company, society, or inhabitants as the circumstances will admit, and under be done under the superintendence of the company to superin- which such water pipes or gas pipes belong, and of the tendence of several commissioners or trustees, or persons having con- trol of the pavements, sewers, roads, streets, highways, company.

Construction of railway.

Notice.

Company not to disturb pipes until they have laid down others.

Pipes not to be laid contrary to acts, and 18 inches surface to be retained.

Company to make good all damage done to property of water or gas company.

When railway crosses pipes, company to make a culvert.

If company obstruct supply of gas or

lanes, and other public passages and places within the parish or district where such mains, pipes, or obstructions shall be situate, or of their surveyor, if they or he think fit to attend, after receiving not less than forty-eight hours' notice for that purpose.

19. Provided always, that it shall not be lawful for the company to remove or displace any of the mains or pipes (other than private service pipes), siphons, plugs, or other works belonging to any such company or society, or to do anything to impede the passage of water or gas into or through such mains or pipes, until good and sufficient mains or pipes, siphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as the same was supplied by the mains or pipes proposed to be removed or displaced, shall, at the expense of the company, have been first made and laid down in lieu thereof, and be ready for use, in a position as little varying from that of the pipes or mains proposed to be removed or displaced as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of such water or gas company or society, or, in case of disagreement between such surveyor or engineer and the company, as a justice shall direct.

20. It shall not be lawful for the company to lay down any such pipes contrary to the regulations of any act of parliament relating to such water or gas company or society, or to cause any road to be lowered for the purposes of the railway, without leaving a covering of not less than eighteen inches from the surface of the road over such mains or pipes.

21. The company shall make good all damage done to the property of the water or gas company or society, by the disturbance thereof, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the main pipes or works of such water or gas company or society, or with the private service pipes of any person supplied by them with water.

22. If it shall be necessary to construct the railway or any of the works over any mains or pipes of any such water or gas company or society, the company shall, at their own expense, construct and maintain a good and sufficient culvert over such main or pipe, so as to leave the same accessible for the purpose of repairs.

23. If by any such operations as aforesaid the company shall interrupt the supply of water or gas, they shall forfeit twenty pounds for every day that such supply shall be so interrupted; and such penalty shall be appropriated

to the benefit of the poor of the parish in which such ob- water, to struction shall occur, in such manner as the minister and forfeit 20*l.* Kirk session of the parish shall direct. per day.

24. If any person wilfully obstruct any person acting Persons under the authority of the company in the lawful exercise obstructing of their power, in setting out the line of the railway, or construc- tion of rail- pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the way, liable railway, or deface or destroy any marks made for the same purpose, he shall forfeit a sum not exceeding five to penalty of 5*l.* pounds for every such offence.

And with respect to the temporary occupation of lands *Temporary use of lands.* near the railway during the construction thereof, be it enacted as follows :

25. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue, or a planted or ornamental road, or an approach to any mansion house within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway, as delineated on the plans ; but before the company shall enter upon or use any such existing road they shall give three weeks' notice of their intention to the owners and occupiers of such road, and of the lands over which the same shall pass, and shall in such notice state the time during which, and the purposes for which, they intend to occupy such road, and shall pay to the owners and occupiers of such road, and of the lands through which the same shall pass, such compensation for the use and occupation of such road, either in a gross sum of money or by half-yearly instalments, as shall be agreed upon between such owners and occupiers respectively and the company, or, in case they differ about the compensation, the same shall be settled by the sheriff in the same manner as any compensation not exceeding fifty pounds is directed to be settled by the Lands' Clauses Consolidation (Scotland) Act, 1845.

26. It shall be lawful for the owners and occupiers of any such road, and of the lands over which the same passes, within ten days after the service of the aforesaid notice, by notice in writing to the company, to object to the company making use of such road, on the ground that other roads, such as the company are hereinbefore authorized to use for the purposes aforesaid, or that some public road would be more fitting to be used for the same, and

Construction of railway.

upon the objection being so made, such proceedings may be had as are hereinafter mentioned with respect to lands temporarily occupied by the company, in respect of which three weeks' notice is hereinafter required to be given, and in the same manner as if in the provisions relative to such proceedings the word road or roads, or the words road and the land over which the same passes, as the case may require, had been substituted in such provisions for the word lands.

Company may take temporary possession of land for certain purposes without previous payment of price.

27. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, without making any previous payment, tender, or deposit, to enter upon any lands, within the prescribed limits, or if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway, as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion house of the owner of any such lands than the prescribed distance, or if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith, hereinafter mentioned, and to use the same for any of the following purposes ; (that is to say,) —

For the purpose of taking earth or soil by side cuttings therefrom ;

For the purpose of depositing spoil thereon ;

For the purpose of obtaining materials therefrom for the construction or repair of the railway or such accommodation works as aforesaid ; or

For the purpose of forming roads thereon to or from or by the side of the railway :

And in exercise of the powers aforesaid it shall be lawful for the company to deposit and also to manufacture and work upon such lands materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand, or other things that may be found therein useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes aforesaid to erect thereon workshops, sheds, and other buildings of a temporary nature : provided always, that nothing in this act contained shall exempt the company from an action for nuisance or other injury, if any done, in the exercise of the powers hereinbefore given, to the lands or habitations of any party.

Company liable to action for nuisance.

other than the party whose lands shall be so taken or used for any of the purposes aforesaid: provided always, that no quarry no stone or slate quarry, brick-field, or other like place, or brick which at the time of the passing of the special act shall be field to be commonly worked or used for getting materials therefrom taken. for the purpose of selling or disposing of the same, shall be taken or used by the company, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

28. In case any such lands shall be required for spoil Company to banks or for side cuttings, or for obtaining materials for give notice the construction or repairing of the railway, the company shall before entering thereon (except in the case of accident to the railway requiring immediate reparation) give three weeks' notice in writing to the owners and occupiers of such lands of their intention to enter upon the same for such purposes, and in case the said lands are required for any of the other purposes hereinbefore mentioned, the company shall (except in the cases aforesaid) give ten days' like notice thereof; and the company shall in such notices respectively state the substance of the provisions hereinafter contained respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be.

29. The said notice shall either be served personally on Service of such owners and occupiers, or left at their last usual place notices on of abode, if any such can, after diligent inquiry, be found, owners and and in case any such owner shall be absent from the occupiers United Kingdom, or cannot be found after diligent in- of lands. quiry, such notice shall be served on the factor or agent (if any) of such owner, and shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

30. In any case in which a notice of three weeks is required to be given, it shall be lawful for object that the owner or occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company, to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company; and upon objection being so made, such proceedings may be had as hereinafter mentioned; and if in such case the

On application of owner, &c., sheriff may summon company. company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for the sheriff, on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before him at a time and place to be named in such summons, such time not being more than fourteen days after such application, nor less than seven days from the service of such summons ; and on the appearance of the parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such sheriff to determine summarily which of the said lands shall be used by the company for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

Sheriff may summon owners of other lands before him, and determine which lands shall be taken. 31. If in the case last mentioned it shall appear to such sheriff, upon the inquiry before him, that the lands of any other party not summoned before him, being sufficient in quantity, and such as the company are hereinbefore authorized to take or use for the purposes aforesaid, would be more fitting to be used by the company than the lands of the person who shall have been so summoned as aforesaid, it shall be lawful for the said sheriff to adjourn such inquiry, and to summon such other person to appear before him at any time, not being more than fourteen days from such inquiry nor less than seven days from the service of such summons ; and on the appearance of the parties, or, in the absence of any of them, on proof of due service of the summons, it shall be lawful for such sheriff to determine finally which lands shall be used for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

Company to give securities, if required, for payment of compensation. 32. Before entering, under the provisions hereinbefore contained, upon any such lands as shall be required for spoil banks or for side cuttings, or for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the expiration of the notice to take such lands as hereinbefore mentioned, find two sufficient persons, to be approved of by the sheriff, in case the parties differ, who shall enter into a bond to such owner or occupier in a sum to such amount as shall be approved of by the sheriff, in case the parties differ, for the payment of such compensation as may become payable in respect of the same in manner herein mentioned.

Company to separate the lands before using them. 33. Before the company shall use any such lands for any of the purposes aforesaid, they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occu-

pier for the convenient occupation of such lands, and shall *Temporary*
 also, to all private roads used by them as aforesaid, put up *use of lands*.
 fences and gates, in like manner, in all cases where the
 same may be necessary, to prevent the straying of cattle
 from or upon the lands traversed by such roads, and in
 case of any difference between the owners or occupiers of
 such roads and lands and the company as to the necessity
 for such fences and gates, such fences and gates as any
 two justices shall deem necessary for the purposes afore-
 said, on application being made to them, in like manner as
 hereinbefore is provided in respect of the use of such road.

34. That if any land shall be taken or used by the Stone quar-
 company, under the provisions of this or the special act, ries, &c., to
 for the purpose of getting materials therefrom for the be worked
 construction or repair of the railway or the accommoda- as surveyor
 tion works connected therewith, they shall work the same of owner
 in such manner as the surveyor or agent of the owner of
 such land shall direct; or, in case of disagreement between
 such surveyor or agent and the company, in such manner
 as any justice shall direct, on the application of either party,
 after notice of the hearing of the application shall have
 been given to the other party.

35. In all cases in which the company shall in exercise Owners of
 of the powers aforesaid enter upon any lands for the pur- lands may
 pose of making spoil banks or side cuttings thereon, or for compel
 obtaining therefrom materials for the construction or company
 repair of the railway, it shall be lawful for the owners or to purchase
 occupiers of such lands, or parties having such interests lands so
 therein as, under the provisions in the said Lands' Clauses temporarily
 occupied.
 Consolidation Act mentioned, are capable of being by them
 sold or conveyed to the company, at any time during the
 possession of any such lands by the company, and before
 such owners or occupiers shall have accepted compensation
 from the company in respect of such temporary occupation,
 to serve a notice in writing on the company, requiring
 them to purchase the said lands, or interests therein
 capable of being sold and conveyed by them respectively;
 and in such notice, such owners or occupiers shall set
 forth the particulars of such their interest in such lands,
 and the amount of their claim in respect thereof; and the
 company shall thereupon be bound to purchase the said
 lands, or the interest therein capable of being sold and
 conveyed by the parties serving such notice.

36. In any of the cases aforesaid, where the company Company to
 shall not be required to purchase such lands, and in all make com-
 other cases where they shall take temporary possession of pensation
 lands by virtue of the powers herein or in the special act for tempo-
 granted, it shall be incumbent on the company, within rary occu-
 one month after their entry upon such lands, upon being pation of
 lands,

Temporary use of lands. required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as

well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent, to be fixed by the sheriff, in case the parties differ, and shall also within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers herein or in the special act granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

and full value of all materials taken.

Compensation to be ascertained under the 8 Vict. c.19.

37. The amount and application of the purchase money and other compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the said Lands' Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

Lands for additional stations.

Company may purchase land for additional stations,

and for making roads.

Crossing of roads, and interference therewith, And with respect to the crossing of roads, or other inter-

ference therewith, be it enacted, That it shall be lawful for the company, in addition to the lands authorized to be compulsorily taken by them under the powers of this or the special act, to contract with any party willing to sell the same, for the purchase of any land adjoining or near to the railway, or to any other railway communicating therewith, and on which the traffic thereupon may pass, and in any town or city adjoining to or near such railways, not exceeding in the whole the prescribed number of acres for extraordinary purposes ; (that is to say,))

For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll houses, offices, warehouses, and other buildings and conveniences ;

For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

And with respect to the crossing of roads, or other interference therewith, be it enacted as follows :

39. If the line of the railway cross any turnpike road *construction of* or public highway, then, except where otherwise provided by the special act, either such road shall be carried over *bridges*. —
 the railway, or the railway shall be carried over such road, by means of a bridge, of the height and width and with the ascent or descent by this or the special act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company: provided always, that, with the consent of the sheriff or two or more justices, as after mentioned, it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level.

40. If the railway cross any turnpike road or public carriage road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of forty shillings for every default therein: provided always, that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

41. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such roads adturnpike road, and shall not cross the same at any greater rate of speed than four miles an hour; and the company shall be subject to all such rules and regulations with re-

four miles an hour.	garded to such crossings as may from time to time be made by the Board of Trade.
Construction of bridges over roads.	42. Every bridge to be erected for the purpose of carrying the railway over any road, except as otherwise provided by the special act, shall be built in conformity with the following regulations ; (that is to say,) The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road :
Width of arch.	The clear height of the arch from the surface of the road shall be not less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road ; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet :
Height of arch over public roads.	The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road :
Over private roads.	The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad, the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed, the same shall not be greater than as it existed at the passing of the special act.
Descent in roads, &c.	43. Every bridge erected for carrying any road over the railway shall, except as otherwise provided by the special act, be built in conformity with the following regulations ; (that is to say,) There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of the immediate approaches of such bridge of not less than three feet :
Construction of bridges over rail-way.	The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road :
Fence.	The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad,
Width of road.	
Ascent of road.	

the ascent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed, the same shall not be greater than as it existed at the passing of the special act.

44. Provided always, that in all cases where the average width of available width for the passage of carriages of any existing bridges roads within fifty yards of the points of crossing the same need not is less than the width hereinbefore prescribed for bridges exceed the over or under the railway, the width of such bridges need width of not be greater than such average available width of such road in certain cases. roads, but so nevertheless that such bridges be not of less width, in the case of a turnpike road or public carriage road, than twenty feet: provided also, that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the If road af- width of such bridge on either side thereof, the company terwards shall be bound, at their own expense, to increase the width widened, of the said bridge to such extent as they may be required bridges to by the trustees or surveyors of such road, not exceeding be also widened. the width of such road as so widened, or the maximum width herein or in the special act prescribed for a bridge in the like case over or under the railway.

45. Provided also, that if the mesne inclination of any Existing road within two hundred and fifty yards of the point of inclinations crossing the same, or the inclination of such portion of roads any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

46. If, in the exercise of the powers by this or the Before special act granted, it be found necessary to cross, cut roads inter- through, raise, sink, or use any part of any road, whether fered with, carriage road, horse road, tramroad, or railway, either others to be public or private, so as to render it impassable for or dan- substituted. gerous to passengers or carriages, or to the persons enti- tled to the use thereof, the company shall, before the com- mencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.

47. If the company do not cause another sufficient road If company to be so made before they interfere with any such exist- do not sub- ing road as aforesaid, they shall forfeit twenty pounds for stitute a

road, to forfeit 20*l.* per day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, surveyor, or other person having the management of such road, if a public road, and shall be applied for the purposes thereof, or in case of a private road the same shall be paid to the owner thereof; and every such penalty shall be recoverable, with costs, by action in any competent court.

Party suffering damage from interruption of road may recover in an action on the case. 48. If any party entitled to a right of way over any road so interfered with by the company shall suffer any special damage by reason that the company shall fail to cause another sufficient road to be made before they interfere with the existing road, it shall be lawful for such party to recover the amount of such special damage from the company, with expenses, by action in the court of session, if the damage claimed exceeds twenty-five pounds, or in the sheriff court, if the damage claimed does not exceed twenty-five pounds, and that whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same.

Company to restore roads interfered with, or put substituted road into a permanently substantial condition. 49. If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the company, or as near thereto as may be; and if such road cannot be restored compatibly with the formation and use of the railway, the company shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow; and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the trustees or parties having the management of the road to be restored by writing under their hands consent to an extension of the period, and in such case within such extended period, (that is to say,) if the road be a turnpike road, within six months, and if the road be not a turnpike road, within twelve months.

Period for restoration. 50. If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management of the road interfered with by the company, if a public road, or

If road be not restored or substituted road completed within the

if a private road to the owner thereof, twenty pounds for period, every day after the expiration of such periods respectively company to during which such road shall not be so restored or the forfeit 20*l.* substituted road completed ; and it shall be lawful for the per day. sheriff or justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

51. If in the course of making the railway the company shall use or interfere with any road, they shall from time to time make good all damage done by them to such roads used road ; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, the same shall be determined by the sheriff or two justices ; and such sheriff or justices may direct such repairs to be made in the state of such road, in respect of the damage done by the company, and within such period, as they think reasonable, and may impose on the company, for not carrying into effect such repairs, any penalty, not exceeding five pounds per day, as to such sheriff or justices shall seem just ; and such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road, the same shall be paid to the owner thereof : provided always, that in determining any such question with regard to a turnpike road, the said sheriff or justices shall have regard to and make full allowance for any tolls that may have been paid by the company on such road in the course of the using thereof.

52. If the railway shall cross any highway other than a public carriageway on the level, the company shall at their own expense make and at all times maintain convenient ascents and descents and other convenient approaches, with handrails and other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a footway, good and sufficient gates or stiles on each side of the railway where the highway shall communicate therewith.

53. When the company shall intend to apply for the consent of the sheriff or two justices, as hereinbefore provided, so as to authorize them to carry the railway across any highway other than a public carriage road on the level, they shall, fourteen days at least previous to the time at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church in

to give notice of application to the sheriff or justices for consent to cross some newspaper circulating in the county, and also to be affixed upon the door of the parish church in

highways.

Crossing of roads and construction of bridges.

which such crossing is intended to be made, or if there be no such church, some other place to which notices are usually affixed ; and if it appear to the sheriff, or to any two or more justices acting for the district in which such highway at the proper crossing thereof is situate, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway in the level, it shall be lawful for such sheriff or justices to consent that the same may be so carried accordingly.

Sheriff or justices may order approaches and fences to be made to highways crossed on the level.

54. If, when the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fences, gates, and stiles as they are hereinbefore required to make, it shall be lawful for the sheriff or two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such sheriff or justices ; and if the company fail to comply with such order, they shall forfeit five pounds for every day that they fail so to do ; and it shall be lawful for the sheriff or justices by whom any such penalty is imposed, to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred.

Screens for turnpike roads.

To be made, if required by the Board of Trade.

55. If the commissioners or trustees of any turnpike road, or the surveyor of any highway, apprehend danger to the passengers on such road in consequence of horses being frightened by the sight of the engines or carriages travelling upon the railway, it shall be lawful for such commissioners or trustees or surveyor, after giving fourteen days' notice to the company, to apply to the Board of Trade with respect thereto ; and if it shall appear to the said board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road, it shall be lawful for them, if they shall think fit, to certify the works necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such certificate to require the company to execute such works within a certain time after the service of such certificate, to be appointed by the said board.

If company fail to construct such

56. Where by any such certificate as aforesaid the company shall have been required to execute any such work in the nature of a screen, they shall execute and complete the

same within the period appointed for that purpose in such screen, to certificate, and if they fail so to do, they shall forfeit to the forfeit 5*l.* commissioners or trustees or surveyor five pounds for per day. every day during which such works shall remain uncom- pleted beyond the period so appointed for their com- pletion; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

57. Where, under the provisions of this or the special *Reparation* act, or any act incorporated therewith, the company are *of bridges*. required to maintain or keep in repair any bridge, fence, Sheriff or approach, gate, or other work executed by them, it shall be lawfull for the sheriff or two justices, on the application of the surveyor of the roads, or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days' notice to the company, to order the company to put such work into complete repair within a period to be limited for that purpose by such sheriff or justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the sheriff or justices by whom any such penalty is imposed, to order the whole or any part thereof to be applied, in such manner and by such persons as they think fit, in putting such work into repair.

58. And whereas expense might frequently be avoided, Disputes as and public convenience promoted, by a reference to the Board of Trade upon the construction of public works of an engineering nature connected with the railway, where a strict compliance with the provisions of this or the special act might be impossible, or attended with inconvenience to the company, and without adequate advantage to the public; be it enacted, that in case any difference in regard to the construction, alteration, or restoration of any road or bridge, or other public work of an engineering nature, required by the provisions of this or the special act, shall arise between the company and any trustees, commissioners, surveyors, or other persons having the control of or being authorized by law to enforce the construction of such road, bridge, or work, it shall be lawful for either party, after giving fourteen days' notice in writing of their intention so to do to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge, or other work; and it shall be lawful for the Board of Trade, if they shall think fit, to decide the same accordingly, and to authorize, by certificate in writing, authoriz-

other modes of construction. any arrangement or mode of construction in regard to any such road, bridge, or other work which shall appear to them either to be in substantial compliance with the provisions of this and the special act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge, or other work ; and after any such certificate shall have been given by the Board of Trade, the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and being so constructed, shall be deemed to be constructed in conformity with the provisions of this and the special act : provided always, that no such certificate shall be granted by the Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

Private interests not to be affected. 59. And be it enacted, That all regulations, certificates, notices, and other documents in writing purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officer appointed for that purpose by the Board of Trade, shall, for the purposes of this and the special act, and any act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved ; and service of any such document, by leaving the same at one of the principal offices of the railway company, or by sending the same by post addressed to the secretary at such office, shall be deemed good service upon the company ; and all notices and other documents required by this or the special act to be given to or laid before the Board of Trade shall be delivered at, or sent by post addressed to, the office of the Board of Trade in London.

**Authentic-
cation of
certificates
of the Board
of Trade.** 60. The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway ; (that is to say,) And with respect to works for the accommodation of lands adjoining the railway, be it enacted as follows :

**Service of
notices on
company.** Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made ; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof :

**To Board
of Trade.** Also sufficient posts, rails, hedges, ditches, mounds, or

**Gates,
bridges, &c.**

Fences.

other fences for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates made to open towards such adjoining lands, and not towards the railway, and all necessary stiles ; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be :

Also all necessary arches, tunnels, culverts, drains, or Drains. other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be ; and such works shall be made from time to time as the railway works proceed :

Also proper watering places for cattle where by reason of the railway the cattle of any person occupying any places. lands lying near thereto shall be deprived of access to their former watering places ; and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be ; and the company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places :

Provided always, that the company shall not be required to make such accommodation works in such a manner as not to ob- Such works would prevent or obstruct the working or using of the struct railway, and that the company may, in lieu of such ac- working of commodation works, make compensation to the owners and occupiers of the lands, for the want thereof, in such manner as may be agreed upon between the company and such owners and occupiers, nor to make any accommoda- tion works with respect to which the owners, lessees, and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making of them.

61. If any difference arise respecting the kind or number of any such accommodation works, or the dimensions as to works or sufficiency thereof, or respecting the maintaining to be settled thereof, the same shall be determined by the sheriff or by sheriff or two justices ; and such sheriff or justices shall also appoint justices. the time within which such works shall be commenced and executed by the company.

62. If for seven days next after the time appointed by

Owners may execute such works on default by the company. such sheriff or justices for the commencement of any such works, the company shall fail to commence such works, or having commenced, shall fail to proceed diligently to execute the same in a sufficient manner, it shall be lawful for the party aggrieved by such failure himself to execute such works or repairs ; and the reasonable expenses thereof shall be repaid by the company to the party by whom the same shall so have been executed ; and if there be any dispute about such expenses, the same shall be settled by the sheriff or two justices : provided always, that no such owner or occupier or other person shall obstruct or injure the railway, or any of the works connected therewith, for a longer time, nor use them in any other manner, than is unavoidably necessary for the execution or repair of such accommodation works.

Disputes as to expenses to be settled by sheriff or justices. 63. If any of the owners or occupiers of lands affected by such railway shall consider the accommodation works made by the company, or directed by such sheriff or justices to be made by the company, insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the company, or, in case of difference, as shall be authorized by the sheriff or two justices.

Owners may make additional accommodation works at their own expense.

Such works to be constructed under the superintendence of the company's engineer.

Accommodation works not to be required after five years.

Owners to be allowed to cross railway until accommodation works are made.

64. If the company so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of their engineer, and according to plans and specifications to be submitted to and approved by such engineer ; nevertheless the owners or occupiers of lands shall not be entitled to require either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company.

65. The company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the opening of the railway for public use.

66. Until the company shall have made the bridges or other proper communications which they shall under the provisions herein or in the special act, or any act incorporated therewith, contained, have been required to make between lands intersected by the railway, and no longer, the owners and occupiers of such lands, and any other persons whose right of way shall be affected by the want

of such communication, and their respective servants, may *Works for accommodation of lands.*
at all times freely pass and repass, with carriages, horses, and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the railway, or to damage the same; nevertheless, if the owner or occupier of any such lands have in his arrangements with the company received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the railway.

67. During the execution of any contract made with Materials, the company the works in course of being done under &c. to vest such contract, and all the materials of every description brought upon or near such works for the purpose of being used in the execution of such contract, shall, in all proceedings instituted by them for the purpose of protecting the same, or by the public prosecutor for the purpose of punishment on account of offences committed against the same, be held to be the property of the company.

68. If any person omit to shut and fasten any gate set up at either side of the railway, for the accommodation of the owners or occupiers of the adjoining lands, as soon as he, and the carriage, cattle or other animals, under his care, have passed through the same, he shall forfeit for every such offence any sum not exceeding forty shillings.

69. And be it enacted, That this or the special act shall not prevent the owners or occupiers of lands adjoining to the railway, or any other persons, from laying down, either upon their own lands or upon the lands of other persons, with the consent of such persons, any collateral branches of railway to communicate with the railway, for the purpose of bringing carriages to or from or upon the railway, but under and subject to the provisions and restrictions of an act passed in the sixth year of the reign of her present Majesty, intituled *An Act for the better Regulation of Railways, and for the Conveyance of Troops;* and the company shall, if required, at the expense of such owners and occupiers and other persons, and subject also to the provisions of the said last-mentioned act, make openings in the rails, and such additional lines of rail as may be necessary for effecting such communication, in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereon; and the company shall not take any rate or toll or other monies for the passing of any passengers, goods, or other things along any branch so

Branch Railways.

Owners

private branch rail-

ways com-

municating with the

railway.

5 & 6 Vict.

c. 55, s 12.

Branch Railways. be made by any such owner or occupier or other person ; but this enactment shall be subject to the following restrictions and conditions ; (that is to say,) —

- Restrictions and conditions.*
- No such branch railway shall run parallel to the railway :
 - The company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel :
 - The persons making or using such branch railways shall be subject to all bye laws and regulations of the company from time to time made with respect to passing upon or crossing the railway, and otherwise ; and the persons making or using such branch railways shall be bound to construct, and from time to time, as need may require, to renew, the offset plates and switches according to the most approved plan adopted by the company, and under the direction of their engineer.

Working of Mines. And with respect to mines lying under or near the railway, be it enacted as follows :

Company not to be entitled to minerals, unless expressly purchased. — 70. The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased ; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

Owners of mines lying near the railway to give notice before working. 71. If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working ; and upon the receipt of such notice, it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose ; and if it appear to the company that the working of such mines, either wholly or partially, is likely to damage the works of the railway, and if the company be desirous that such mines or any parts thereof should be left unworked, and if they be willing to make compensation for such mines or minerals, or such parts thereof as they desire to be left unworked, they shall give notice to such owner, lessee, or occupier of such their desire, and

Company may purchase such mines.

shall in such notice specify the parts of the mines under the railway or works or within the distance aforesaid which they shall desire to be left unworked, and for which they shall be willing to make compensation ; and in such case such owner, lessee, or occupier shall not work or get the mines or minerals comprised in such notice ; and the company shall make compensation for the same, and for all loss or damage occasioned by the non-working thereof. to the owner, lessee, and occupier thereof respectively ; and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

72. If before the expiration of such thirty days, the company do not give notice of their desire to have such unwilling to mines left unworked, and of their willingness to make purchase, such compensation as aforesaid, it shall be lawful for such owner may owner to work the parts thereof for which the company shall not have agreed to pay compensation, up to the limits of the mines or minerals for which they shall have agreed to make compensation, in such manner as such owner, lessee, or occupier shall think fit, for the purpose of getting the minerals contained therein ; and if any damage or obstruction be occasioned to the railway or works by the working or railway by getting of any such minerals which the company shall so improper have required to be left unworked, and for which they shall so have agreed to make compensation, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense ; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby by action in any competent court.

73. If the working of any such mines or minerals under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to be on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata the working whereof shall be so prevented as may be requisite to enable them to ventilate, drain, and work their said

Dimensions of such airways, &c. mines; but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

Company to make compensation to owners for loss by interruption of continuous working of such mines,

74. The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to be on both sides of the railway all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company, which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question shall arise between the company, and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses, the same shall be settled as in other cases of disputed compensation.

and also to owner of surface lands for any airway or other work made necessary by the railway.

75. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines), by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

Company may enter and inspect the working of mines.

76. For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery connected with such mines belonging to the owner, lessee, or occupier of such mines upon payment of the reasonable cost of using and working the same, and of any loss thereby occasioned to the working of the mines, or otherwise, and to use all necessary means for discovering the distance from the railway to the

parts of such mines which are being worked or about so to be.

77. If any such owner, lessee, or occupier of any such Owner's mine shall refuse to allow any person appointed by the fusing to company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

78. If it appear that any such mines have been worked contrary to the provisions of this or the special act, the company may, if they think fit, give notice to the owner, worked, lessee, or occupier thereof to construct such supports or supports to works, and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice, any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expense thereof from such owner, lessee, or occupier by action in any competent court.

And with respect to the carrying of passengers and goods upon the railway, and the tolls to be taken thereon, be it enacted as follows:

79. It shall be lawful for the company to use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railway all such passengers and goods as shall be offered to them for that purpose, and to make such reasonable charges in respect thereof as they may from time to time determine upon, not exceeding the tolls by the special act authorized to be taken by them.

80. It shall be lawful for the company from time to time to enter into any contract with any other company, may being the owners or lessees or in possession of any other tract with railway, for the passage over or along the railway by the other company, authorized to be made of any engines, coaches, waggons, or other carriages of any other company, or which shall pass over any other line of railway, or for the passage over any other line of railway of any engines, coaches, waggons, or other carriages of the company, or which shall pass over their line of railway, upon the payment of such tolls and under such conditions and restrictions as may be mutually agreed upon; and for the purpose aforesaid it shall be lawful for the respective parties to enter into any contract for the division or apportionment of the tolls to be taken upon their respective railways.

81. Provided always, That no such contract as aforesaid shall in any manner alter, affect, increase, or diminish any tracts not to of the tolls which the respective companies, parties to such affect tolls

payable by persons not parties to such contract, shall for the time being be respectively authorized and entitled to demand or receive from any person or any other company, but that all other persons and companies shall, notwithstanding any such contract, be entitled to the use and benefit of any of the said railways, upon the same terms and conditions, and on payment of the same tolls, as they would have been in case no such contract had been entered into.

Company not to be liable to a greater extent than common carriers.

82. Nothing in this or the special act contained shall extend to charge or make liable the company further or in any other case than where, according to the laws of Scotland, stage coach proprietors and common carriers would be liable, nor shall extend in any degree to deprive the company of any protection or privilege which common carriers or stage coach proprietors may be entitled to; but, on the contrary, the company shall at all times be entitled to the benefit of every such protection and privilege.

Company may alter or vary tolls.

83. And whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties; it shall be lawful therefore for the company, subject to the provisions and limitations herein and in the special act contained, from time to time to alter or vary the tolls by the special act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit: provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton per mile or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the railway.

Tolls to be charged equally under like circumstances.

84. And whereas authority has been given by various acts of parliament to railway companies to demand tolls for the conveyance of passengers and goods and for other services over a fraction of a mile equal to the toll which they are authorized to demand for one mile; be it enacted, That in cases in which any railway shall be amalgamated with any other adjoining railway or railways, such tolls shall be calculated and imposed at such rates as if such amalgamated railways had originally formed one line of railway.

Tolls to be calculated on amalgamated railways as one line.

85. It shall not be lawful for the company at any time Company to demand or take a greater amount of toll, or make any may take greater charge for the carriage of passengers or goods, toll. than they are by this and the special act authorized to demand; and upon payment of the tolls from time to Persons time demandable, all companies and persons shall be en- may use titled to use the railway, with engines and carriages pro- railway perly constructed as by this and the special act directed, upon pay- subject nevertheless to the provisions and restrictions of ment of the said act of the sixth year of her present Majesty, in- tolls. tituled, "An Act for the better Regulation of Railways, and 5 & 6 Vict. for the Conveyance of Troops," and to the regulations to be c. 55, s. 11. from time to time made by the company by virtue of the powers in that behalf hereby and by the special act con- fered upon them.

86. A list of all the tolls authorized by the special act *Collection to be taken, and which shall be exacted by the company, of tolls.* shall be published by the same being painted upon one toll board or more in distinct black letters on a white List of tolls ground, or white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable.

87. The company shall cause the length of the railway Railway to to be measured, and posts or other conspicuous objects to be mea- set up and maintained along the whole line thereof, at sured, and the distance of one quarter of a mile from each other, milestones with numbers or marks inscribed thereon denoting such distances.

88. No tolls shall be demanded or taken by the com- No tolls to pany for the use of the railway during any time at which be taken the boards hereinbefore directed to be exhibited shall not unless be so exhibited, or at which the milestones hereinbefore board ex- directed to be set up and maintained shall not be so set hibited and up and maintained; and if any person wilfully pull down, milestones deface, or destroy any such board or milestone, he shall set up. forfeit a sum not exceeding five pounds for every such offence.

89. The tolls shall be paid to such persons, and at such Tolls to be places upon or near to the railway, and in such manner paid as di- and under such regulations, as the company shall, by rected by notice to be annexed to the list of tolls, appoint. company.

90. If, on demand, any person fail to pay the tolls due In default in respect of any carriage or goods, it shall be lawful for of payment the company to detain and sell such carriage, or all or any of tolls, part of such goods, or, if the same shall have been removed company from the premises of the company, to detain and sell any may detain other carriages or goods within such premises belonging and sell goods.

Collection of tolls. — to the party liable to pay such tolls, and out of the monies arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, of the monies arising by such sale, and such of the carriages or goods as shall remain unsold, to the person entitled thereto, or it shall be lawful for the company to recover any such tolls by action at law.

Owners of carriages and goods to give account of lading, &c., to collector of tolls.

91. Every person being the owner or having the care of any carriage or goods passing or being upon the railway shall, on demand, give to the collector of tolls, at the places where he attends for the purpose of receiving goods or of collecting tolls for the part of the railway on which such carriage or goods may have travelled or be about to travel, an exact account in writing signed by him of the number or quantity of goods conveyed by any such carriage, and of the point on the railway from which such carriage or goods have set out or are about to set out, and at what point the same are intended to be unloaded or taken off the railway ; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to the payment of different tolls, then such owner or other person shall specify the respective numbers or quantities thereof liable to each or any of such tolls.

Owners, &c., not giving account of lading, &c., liable to penalty.

92. If any such owner or other such person fail to give such account, or to produce his way-bill or bill of lading, to such collector or other officer or servant of the company demanding the same, or if he give a false account, or if he unload or take off any part of his lading or goods at any other place than shall be mentioned in such account, with intent to avoid the payment of any tolls payable in respect thereof, he shall for every such offence forfeit to the company a sum not exceeding ten pounds for every ton of goods, or for any parcel not exceeding one hundred weight, and so in proportion for any less quantity of goods than one ton, or for any parcel exceeding one hundred weight, (as the case may be,) which shall be upon any such carriage ; and such penalty shall be in addition to the toll to which such goods may be liable.

Disputes as to amount of tolls to be settled by sheriff or justices.

93. If any dispute arise concerning the amount of the tolls due to the company, or concerning the charges occasioned by any detention or sale thereof under the provisions herein or in the special act contained, the same shall be settled by the sheriff or by two justices ; and it shall be lawful for the company in the meanwhile to detain the goods, or (if the case so require) the proceeds of the sale thereof.

Differences as to weights, &c.

94. If any difference arise between any toll collector or other officer or servant of the company and any owner of

or person having the charge of any carriage passing or being upon the railway, or of any goods conveyed or to be conveyed by such carriage, respecting the weight, quantity, quality, or nature of such goods, such collector or other officer may lawfully detain such carriage or goods, may detain and examine, weigh, gauge, or otherwise measure the same; and if upon such measuring or examination such carriages appear to be of greater weight or quantity or of other nature than shall have been stated in the account given thereof, then the person who shall have given such account shall pay, and the owner of such carriage, or the respective owners of such goods, shall also, at the option of the company, be liable to pay the costs of such measuring and examining; but if such goods appear to be of the same or less weight or quantity than, and of the same nature as shall have been stated in such account, then the company shall pay such costs, and they shall also pay to such owner of or person having charge of such carriage, and to the respective owners of such goods, such damage (if any) as shall appear to the sheriff or any two justices, on a summary application to him or them for that purpose, to have arisen from such detention.

95. If at any time it be made to appear to any such sheriff or justices, upon the complaint of the company, that any such detention, measuring, or examining of any carriage or goods, as hereinbefore mentioned, was without reasonable ground, or that it was vexatious on the part of such collector or other officer, then the collector or other officer shall himself pay the costs of such detention and measuring, and the damage occasioned thereby; and in default of immediate payment of any such costs or damage, the same may be recovered by poinding and sale of the goods of such collector, and such sheriff or justices shall issue his or their warrant accordingly.

96. If any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding forty shillings.

97. If any person be discovered, either in or after committing or attempting to commit any such offence as in practising

*Collection
of tolls.*

*Costs of
measuring
and examina-
tion.*

*liable for
costs and
damage.*

*frauds on
the com-
pany liable
to forfeit
2*l.**

*Parties
in practising*

frauds may be detained and taken before sheriff or justices. the preceding enactment mentioned, all officers and servants and other persons on behalf of the company, or such other company or party as aforesaid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before the sheriff or some justice, or until he be otherwise discharged by due course of law.

Persons bringing dangerous goods on railway without notice liable to forfeit 20l. 98. No person shall be entitled to carry, or to require the company to carry, upon the railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in the judgment of the company may be of a dangerous nature; and if any person send by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left, at the time of so sending, he shall forfeit to the company twenty pounds for every such offence; and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Delivery of matters in possession or custody of toll collector, to be delivered to company when required. 99. If any collector of tolls or other officer employed by the company be discharged or suspended from his office, or die, abscond, or absent himself, and if such collector or other officer, or the wife, widow, or any of the family or representatives of any such collector or other officer, refuse or neglect, after seven days' notice in writing for that purpose, to deliver up to the company, or to any person appointed by them for that purpose, any station, dwelling house, office, or other building, with its appurtenances, or any books, papers, or other matters belonging to the company in the possession or custody of any such collector or officer at the occurrence of any such event as aforesaid, then, upon application being made by the company to the sheriff or to any two justices, it shall be lawful for such sheriff or justices to order any constable, with proper assistance, to enter upon such station or other building, and to remove any person found therein, and to take possession thereof, and of any such books, papers, or other matters, and to deliver the same to the company, or any person appointed by them for that purpose.

Sheriff or justices may order possession to be given. 100. And be it enacted, That the company shall every year cause an annual account in abstract to be prepared, showing the total receipts and expenditure of all funds levied by virtue of this or the special act, for the year ending on the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the directors or some of them, and by the

Company to prepare annual account of receipts and payments, and transmit copy to sheriff clerk.

auditors, and shall, if required, transmit a copy of the said account, free of charge, to the sheriff clerks of the counties through which the railway shall pass, on or before the thirty-first day of January then next; and the copy of such account shall be open to the inspection of the public at all seasonable hours, on payment of the sum of one shilling for every such inspection: provided always, that if the said company shall omit to prepare or transmit such account as aforesaid, if required so to do by any such sheriff clerk, they shall forfeit for every such omission the sum of twenty pounds.

*Collection
of tolls*

And with respect to the regulations of the use of the *Bye Laws*. railway, be it enacted as follows:

101. It shall be lawful for the company from time to time, subject to the provisions and restrictions in this and the special act contained, to make regulations for the following purposes; (that is to say,) —

For regulating the mode by which and the speed at which carriages using the railway are to be moved or propelled;

For regulating the times of the arrival and departure of any such carriages;

For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry;

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages;

For preventing the smoking of tobacco, and the commission of any other nuisance, in or upon such carriages, or in any of the stations or premises occupied by the company;

And, generally, for regulating the travelling upon or using and working of the railway:

But no such regulation shall authorize the closing of the railway, or prevent the passage of engines or carriages on the railway, at reasonable times, except at any time when in consequence of any of the works being out of repair, or from any other sufficient cause, it shall be necessary to close the railway or any part thereof.

102. For better enforcing the observance of all or any Company of such regulations, it shall be lawful for the company, may make subject to the provisions of an act passed in the fourth and alter year of the reign of her present Majesty, intituled "An Act for regulating Railways," to make bye laws, and from time to time to repeal or alter such bye laws, and make others, provided that such bye laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act; and such bye laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and any person offending against any such

bye laws.

See 3 & 4 Vict. c. 97,

s. 8, 9.

Persons offending against bye laws liable to forfeit 5l. bye law shall forfeit for every such offence any sum not exceeding five pounds, to be imposed by the company in such bye laws as a penalty for any such offence ; and if the infraction or non-observance of any such bye law or other such regulation as aforesaid be attended with danger or annoyance to the public or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere to obviate or remove such danger, annoyance, or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye law.

Substance of such bye laws to be exhibited on a board. 103. The substance of such last-mentioned bye laws, when confirmed or allowed according to the provisions of any act in force regulating the allowance or confirmation of the same, shall be painted on boards, or printed on paper and pasted on boards, and hung up and affixed and continued on the front or other conspicuous part of every wharf or station belonging to the company, according to the nature or subject matter of such bye laws respectively, and so as to give public notice thereof to the parties interested therein or affected thereby ; and such boards shall from time to time be renewed as often as the bye laws thereon, or any part thereof, shall be obliterated or destroyed ; and no penalty imposed by any such bye law shall be recoverable unless the same shall have been published and kept published in manner aforesaid.

Such bye laws to be binding on all parties. 104. Such bye laws, when so confirmed, published, and affixed, shall be binding upon and be observed by all parties, and shall be sufficient to justify all persons acting under the same ; and for proof of the publication of any such bye laws it shall be sufficient to prove that a printed paper or painted board, containing a copy of such bye laws, was affixed and continued in manner by this act directed, and in case of its being afterwards displaced or damaged, then that such paper or board was replaced as soon as conveniently might be.

Leasing of railway. — 105. Where the company shall be authorized by the special act to lease the railway, or any part thereof, to any company or person, the lease to be executed in pursuance of such authority shall contain all usual and proper obligations on the part of the lessee for maintaining the railway, or the portion thereof comprised in such lease, in good and efficient repair and working condition during the continuance thereof, and for so leaving the same at the expiration of the term thereby granted, and such other provisions, conditions, obligations, and agreements as are usually inserted in leases of a like nature.

Such lease to entitle 106. Such lease shall entitle the company or person to whom the same shall be granted to the free use of the

railway or portion of railway comprised therein, and during the continuance of any such lease all the powers and use of rail- way and ex- ercise of powers and privileges granted to and which might otherwise be ex- ercised and enjoyed by the company, or the directors thereof, or their officers, agents, or servants, by virtue of this or the special act, with regard to the possession, enjoyment, and management of the railway, or of the part thereof comprised in such lease, and the tolls to be taken thereon, shall be exercised and enjoyed by the lessee, and the officers and servants of such lessee, under the same regulations and restrictions as are by this or the special act imposed on the company and their directors, officers, and servants; and such lessee shall, with respect to the railway comprised in such lease, be subject to all the obligations by this or the special act imposed on the company.

And with respect to the engines and carriages to be brought on the railway, be it enacted as follows :

107. Every locomotive steam engine to be used on the railway shall, if it use coal or other similar fuel emitting smoke, be constructed on the principle of consuming and so as to consume its own smoke; and if any engine be not so constructed, the company or party using such engine shall forfeit five pounds for every day during which such engine shall be used on the railway.

108. No locomotive or other engine, or other description of moving power, shall at any time be brought upon or used on the railway unless the same have first been approved of by the company; and within fourteen days after notice given to the company by any party desirous of bringing any such engine on the railway the company shall cause their engineer or other agent to examine such engine at any place within three miles' distance from the railway to be appointed by the owner thereof, and to report thereon to the company; and within seven days after such report, if such engine be proper to be used on the railway, the company shall give a certificate to the party requiring the same of their approval of such engine; and if at any time the engineer or other agent of the company report that any engine used upon the railway is out of repair, or unfit to be used upon the railway, the company may require the same to be taken off, or may forbid its use upon the railway until the same shall have been repaired to the satisfaction of the company, and upon the engine being so repaired, the company shall give a certificate to the party requiring the same of their approval of such engine; and if any difference of opinion arise between the company and the owner of any such engine as to the fitness or unfitness thereof for the purpose of

being used on the railway, such difference shall be settled by arbitration.

Persons using engines without certificate, or not removing improper engines after notice, liable to forfeit 20l.

109. If any person, whether the owner or other person having the care thereof, bring or use upon the railway any locomotive or other engine, or any moving power, without having first obtained such certificate of approval as aforesaid, or if, after notice given by the company to remove any such engine from the railway, such person do not forthwith remove the same, or if, after notice given by the company not to use any such engine upon the railway, such person do so use such engine, without having first repaired the same to the satisfaction of the company, and obtained such certificate of approval, every such person shall in any of the cases aforesaid forfeit to the company a sum not exceeding twenty pounds; and in any such case it shall be lawful for the company to remove such engine from the railway.

Carriages to be constructed according to company's regulations.

110. No carriage shall pass along or be upon the railway, (except in directly crossing the same, as herein or by the special act authorized,) unless such carriage be at all times, so long as it shall be used or shall remain on the railway, of the construction and in the condition which the regulations of the company for the time being shall require; and if any dispute arise between the company and the owner of any such carriage as to the construction or condition thereof, in reference to the then existing regulations of the company, such dispute shall be settled by arbitration.

Such regulations to apply also to company's carriages.

111. The regulations from time to time to be made by the company respecting the carriages to be used on the railway shall be drawn up in writing, and be authenticated by the common seal of the company, and shall be applicable alike to the carriages of the company and to the carriages of other companies or persons using the railway; and a copy of such regulations shall, on demand, be furnished by the secretary of the company to any person applying for the same.

Persons using improper carriages liable to forfeit 20l.

112. If any carriage, not being of such construction or in such condition as the regulations of the company for the time being require, be made to pass or be upon any part of the railway, (except as aforesaid,) the owner thereof, or any person having for the time being the charge of such carriage, shall forfeit to the company a sum not exceeding ten pounds for every such offence, and it shall be lawful for the company to remove any such carriage from the railway.

Owner's name, &c., to be regis-

113. The respective owners of carriages using the railway shall cause to be entered with the secretary or other officer of the company appointed for that purpose the

names and places of abode of the owners of such carriages tered, and respectively, and the numbers, weights, and gauges of exhibited their respective carriages; and such owners shall also, if on car- so required by the company, cause the same particulars rages. to be painted in legible characters on some conspicuous part of the outside of every such carriage, so as to be always open to view; and every such owner shall, when- ever required by the company, permit his carriage to be weighed, measured, or gauged at the expense of the company.

114. If the owner of any carriage fail to comply with the requisitions contained in the preceding enactment, it shall be lawful for the company to refuse to allow such carriage to be brought upon the railway, or to remove the same therefrom, until such compliance.

115. If the loading of any carriage using the railway be such as to be liable to collision with other carriages improperly loaded, or to be otherwise dangerous, or if the person having the care of any carriage or goods upon the railway suffer the same or any part thereof to remain on the railway so as to obstruct the passage or working thereof, it shall be lawful for the company to cause such carriage or goods to be unloaded and removed in any manner proper for preventing such collision or obstruc- tion, and to detain such carriage or goods, or any part thereof, until the expenses occasioned by such unloading, removal, or detention be paid.

116. The company shall not be liable for any damage or loss occasioned by any such unloading, removal, or not to be detention as aforesaid, except for damage wilfully or negligently done to any carriage or goods so unloaded, removed, or detained; nor shall they be liable for the safe custody of any such carriage or goods so detained, unless the same be wrongfully detained by them, and then only for so long a time as the same shall have been so wrong- fully detained.

117. The respective owners of engines and carriages passing or being upon the railway shall be answerable for any damage done by their engines or carriages, or by any of the servants or persons employed by them, to or upon the railway, or the machinery or works belonging thereto, or to or upon the property of any other person.

118. It shall be lawful for any owner of any engine or carriage who shall pay the amount of any damage caused by the misfeasance or negligence of any servant or other person employed by him to recover the amount so paid from him from such servant or other person.

And with respect to the settlement of disputes by arbitration, be it enacted as follows:

When questions are to be determined by arbitration, arbiters to be appointed within fourteen days after notice.

Appointment not to be revoked without consent.

Vacancy of arbiter to be supplied.

Arbiters to appoint oversman.

119. When any dispute directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbiter, each party, on the request of the other party, shall nominate and appoint an arbiter to whom such dispute shall be referred; and every appointment of an arbiter shall be made on the part of the company under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a company or corporation, under the hand of the proper officer or person authorized by such company or corporation; and such appointment shall be delivered to the arbiter, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party, to appoint an arbiter, such last-mentioned party fail to appoint such arbiter, then upon such failure, the party making the request, and having himself appointed an arbiter, may appoint such arbiter to act on behalf of both parties; and such arbiter may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbiter shall be final.

120. If before the matters so referred shall be determined any arbiter appointed by either party die, or become incapable to act, the party by whom such arbiter was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbiter may proceed *ex parte*; and every arbiter so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbiter at the time of such his death or incapacity as aforesaid.

121. Where more than one arbiter shall have been appointed, such arbiters shall, before they enter upon the matters so referred to them, nominate and appoint by writing under their hands an oversman to decide on any such matters on which they shall differ, or which shall be referred to them under this or the special act; and if such oversman shall die or become incapable to act, they shall

forthwith after such death or incapacity appoint another oversman in his place; and the decision of every such oversman on the matters on which the arbiters shall differ shall be final.

Arbitration.
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122. If in either of the cases aforesaid the said arbiters shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an oversman, appoint an oversman ordinary, on the application of either party to such arbitration, shall appoint an oversman; and the decision of such oversman on the matters on which the arbiters shall differ, or which shall be referred to them under this or the special act, shall be final.

123. If when a single arbiter shall have been appointed, such arbiter shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special act, in the same manner as if such arbiter had not been appointed.

124. If where more than one arbiter shall have been appointed, either of the arbiters refuse or for seven days neglect to act, the other arbiter may proceed *ex parte*, and the decision of such arbiter shall be as effectual as if the other he had been the single arbiter by both parties.

125. If where more than one arbiter shall have been appointed, and where neither of them shall refuse or fail to make neglect to act as aforesaid, such arbiters shall fail to make their award within twenty-one days after the day on which the last of such arbiters shall have been appointed, or within such extended time as shall have been appointed for that purpose by both such arbiters, under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

126. The said arbiters or their oversman may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose, and may also grant diligence for the recovery of such documents as either party may require, or for citing witnesses, and on application to the lord ordinary, letters of supplement, or such other writ as may be necessary, shall be issued by the lord ordinary in support of such diligence.

127. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, to be in the expenses of and attending every such arbitration, to be determined by the arbiters, including the expense of recording the decreet arbitral or award in the books of the council and session, and of furnishing extracts thereof.

from the said books, shall be in the discretion of the arbiters or the oversman, as the case may be.

Award to be in writing, and recorded.

128. The arbiters or oversman, as the case may be, shall make the decree arbitral or award in writing, and shall cause the same to be recorded in the books of council and session ; and extracts of decrees arbitral or awards so recorded shall make faith in all courts and cases in like manner as the original decrees arbitral or awards themselves, except where the originals are offered to be improven.

Award not to be set aside.

129. No award made in respect to any question referred to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form.

Service of notices upon company.

130. And be it enacted, That any summons or notice, or any writ or other proceeding at law, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary, then by being given to any one director of the company.

Tender of amends.

131. And be it enacted, That if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action ; and if no such tender shall have been made, it shall be lawful for the defender, by leave of the court where such action shall be pending, at any time before the record is closed, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defenders are allowed to pay money into court.

Recovery of damages and penalties.

And with respect to the recovery of damages not specially provided for, and to the determination of any other matter referred to the sheriff or to justices, be it enacted as follows :

Damages not otherwise provided for may be determined by sheriff.

132. In all cases where any damages, charges, or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by the sheriff ; and if the amount so ascertained be not paid by the company or other party liable to pay the same, within seven days after demand, the amount may be recovered by pounding and

sale of the goods of the company or other party liable as aforesaid, and the sheriff shall, on application, issue his warrant accordingly.

133. If sufficient goods of the company cannot be Distress found whereon to levy any such damages, charges, or against expenses payable by the company, the same may, if the company amount thereof do not exceed twenty pounds, be recovered by poinding and sale of the goods of the treasurer of the company, and the sheriff, on application, shall issue his warrant accordingly; but no such poinding and sale shall be executed against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress or poinding and sale as aforesaid, he may retain the amount so paid by him, and all expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

134. Where in this or the special act, or any act incorporated therewith, any question of damages, charges, proceeding expenses, or other matter is referred to the determination before the of any sheriff or justices, it shall be lawful for the sheriff or any justice, upon the application of either party, to order the other party to appear before such sheriff, if the order shall be issued by the sheriff, or before two justices, if the order shall have been issued by a justice, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such sheriff or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the expenses of every such inquiry shall be in the discretion of such sheriff or justices, and he or they shall determine the amount thereof.

135. The company shall publish the short particulars Company to of the several offences for which any penalty is imposed publish by this or the special act, or any act incorporated there- short par- with, or by any bye law of the company affecting other ticulars of persons than the shareholders, officers, or servants of the offences for company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, a board, and where any such penalties are of local application, shall cause such boards to be affixed in some conspicuous place.

and renew when obliterated.

in the immediate neighbourhood to which such penalties are applicable or have reference ; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed ; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication.

136. If any person pull down or injure any board put up or affixed as required by this or the special act, or any act incorporated therewith, for the purpose of publishing any bye law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before the sheriff or two justices.

137. Every penalty or forfeiture imposed by this or the special act, or by any bye law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before the sheriff or two justices ; and on complaint being made to any sheriff or justice, he shall issue an order requiring the party complained against to appear before himself, if the order be issued by a sheriff, or before two or more justices, if the order be issued by a justice, at a time and place to be named in such order ; and every such order shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode ; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such order, it shall be lawful for any sheriff or two justices to proceed to the hearing of the complaint ; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such sheriff or justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such expenses attending the conviction as such sheriff or justices shall think fit.

Penalties may be levied by poinding and sale.

138. If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such expenses as aforesaid, be not paid, the amount of such penalty and expenses shall be levied by poinding and sale, and such sheriff or justices, or either of them, shall issue his or their warrant of poinding and sale accordingly.

Sheriff or justices may detain offenders until return made to warrant

139. It shall be lawful for any such sheriff or justices to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of poinding and sale to be issued for levying such penalty or forfeiture and expenses, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the sheriff or justices,

for his appearance before him or them on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of poinding and sale it shall appear to the sheriff or justices, by the admission of the offender or otherwise, that no sufficient poinding and sale can be had within the jurisdiction of such sheriff or justices whereon to levy such penalty or forfeiture and expenses, he or they may, if he or they think fit, refrain from issuing such warrant; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the sheriff or justices, then such sheriff or justices shall by warrant cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture and expenses be sooner paid and satisfied.

140. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by poinding and sale, such sum of money shall be levied by poinding and sale of the goods and effects of the party liable to pay the same; and the overplus arising from the sale of such goods and effects, after satisfying such sum of money, and the expenses of the poinding and sale, shall be returned, on demand, to the party whose goods shall have been seized.

141. No poinding and sale made by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser or wrongdoer, on account of any defect or want of form in the summons, conviction, warrant, or other proceeding relating thereto, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action before the sheriff court.

142. The sheriff or justices by whom any such penalty or forfeiture shall be imposed, where the application of penalties thereof is not otherwise provided for, may award not more than one-half thereof to the informer, and shall award the remainder to the Kirk session, or treasurer or collector of the funds for the poor, of the parish in which the offence shall have been committed, for the benefit of the poor of such parish.

143. No person shall be liable to the payment of any penalties or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before the sheriff or justices, unless the complaint respecting such offence shall have been

made before such sheriff or some justice within six months next after the commission of such offence.

**Damage to
be made
good in ad-
dition to
penalty.**

144. If through any act, neglect, or default, on account whereof any person shall have incurred any penalty imposed by this or the special act, or any act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty ; and the amount of such damage shall, in case of dispute, be determined by the sheriff or justices by whom the party incurring such penalty shall have been convicted ; and on non-payment of such damages, on demand, the same shall be levied by poinding and sale, and such sheriff or justices shall issue his or their warrant accordingly.

**Sheriff or
justices
may sum-
mon wit-
nesses.**

145. It shall be lawful for any sheriff or justice to summon any person to appear before him as a witness in any matter in which such sheriff or justice or two or more justices shall have jurisdiction under the provisions of this or the special act, or any act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter ; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such sheriff or justice or justices, every such person shall forfeit a sum not exceeding five pounds for every such offence.

**Officer of
company
may detain
offenders
whose
names shall
be un-
known.**

146. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall be found committing any offence against the provisions of this or the special act, or any act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him with all convenient despatch before the sheriff or a justice, without any warrant or other authority than this or the special act : and such sheriff or justice shall proceed with all convenient despatch in the matter of the complaint against such offender.

**Proceed-
ings by
sheriff need
not be in
writing.**

147. Any sheriff to whom any application is authorized to be made, and before whom any judicial proceeding shall in consequence take place or become necessary under or by virtue of this or the special act, or any act incorporated therewith, shall and he is hereby authorized and required summarily to call before him all parties who appear to him to be interested therein, and to proceed forthwith to hear *vivâ voce*, and pronounce judgment

regarding the matters mentioned in such application or proceedings, or to do the several matters and things required by this act to be done by him, without waiting the ordinary course of the roll of causes before him, and without written pleadings or a written record, or reducing any evidence which may be led by either of the parties to writing, unless and except where the said sheriff shall consider that the matters mentioned in such application or proceedings can with more advantage be decided with written pleadings and with a written record, in which case he shall proceed to make up a record, and bring the said matters to a conclusion with all convenient despatch; and the orders and judgments of the said sheriff when pronounced without a record shall be final and conclusive, and not subject to review by suspension or advocation or to reduction on any ground whatever.

Recovery of damages and penalties.

148. The sheriff or justice or justices before whom any person shall be convicted of any offence against this or the conviction special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule to this act annexed.

149. No proceeding in pursuance of this or the special Not vacated act, or any act incorporated therewith, shall be quashed or for want of vacated for want of form, nor shall the same be removed form, &c. by suspension or otherwise into any superior court.

150. In all cases which may come before any sheriff Parties aggrieved by substitute under this or the special act, or any act incor- grieved by porated therewith, in which written pleadings shall have decision of been allowed, and a written record shall have been sheriff sub- made up, and where the evidence which has been led stitute may by the parties shall have been reduced to writing, but in appeal to no other case whatever, it shall be competent for any of the parties thereto, within seven days after a final judgment shall have been pronounced by such sheriff substi- tute, to appeal against the same to the sheriff of the county, by lodging a minute of appeal with the sheriff clerk of such county or his depute; and the said sheriff shall thereupon review the proceedings of the said sheriff substitute and whole process, and, if he think proper, hear the parties *vivâ voce* thereon, and pronounce judgment; and such judgment shall in no case be subject to review by suspension or advocation or to reduction on any ground whatever.

151. If any party shall feel aggrieved by any determination or adjudication of any justices with respect to any matter under the provisions of this or the special act, or justices to any act incorporated therewith, he may, unless otherwise specially provided, appeal to the general quarter sessions giving security for the county or place in which the cause of appeal shall sions on

Recovery of damages and penalties. have arisen ; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court may make such order as they think reasonable.

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152. At the quarter sessions for which such notice shall be given, the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions ; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable ; and they may make such order concerning the expenses, both of the adjudication and of the appeal, as they may think reasonable.

Special Act. And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows :

Company to keep copy of special act at their principal office, and deposit copies with sheriff clerks.

7 W. 4, &
1 Vict. c. 83.

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153. The company shall at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her Majesty or some of them ; and shall also within the space of such six months deposit in the offices of each of the sheriff clerks of the several counties into which the works shall extend a copy of such special act, so printed as aforesaid ; and the said sheriff clerks shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present Majesty, intituled " An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

Penalty on company failing to 154. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for every

such offence, and also five pounds for every day after- keep or de-
wards during which such copy shall be not so kept or posit act.
deposited.

155. And be it enacted, that this act may be amended Act may be
or repealed by any act to be passed in this session of par- amended or
liament. repealed.

SCHEDULE referred to by the foregoing Act.

<i>Form of conviction before</i>	<i>Form of conviction before she-</i>
to wit.	riff or jus-
Be it remembered, that on the . . . day of . . .	ties.
in the year of our Lord . . . A. B. is convicted	
before me C., the sheriff [or before us D., E., two of her	
Majesty's justices of the peace] for the county of . . .	
[here describe the offence generally, and the time and	
place when and where committed], contrary to the [here	
name the special act]. Given under my hand [or under	
our hands], the day and year first above written.	
	C.
	or
	D.
	E.

8 & 9 VICT. cap. 96.

An Act to restrict the Powers of selling or leasing Railways contained in certain Acts of Parliament relating to such Railways.

[4th August, 1845.]

WHEREAS provisions have been introduced in various acts Preamble. of parliament, during the present session of parliament, relating to railways, giving to railway companies general powers of granting or accepting a lease, sale, or transfer of their own or other lines of railway ; and it is expedient that such powers should be restrained: be it therefore No railway enacted by the Queen's most excellent Majesty, by and to be leased with the advice and consent of the lords spiritual and or trans-temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall not be less under lawful for the company of proprietors of any railway, by virtue of any powers contained in any act passed in the present session, to make or grant, or for any other railway company or party, by virtue of any such powers, to accept, a sale, lease, or other transfer of any railway,

unless under the authority of a distinct provision in some act of parliament to that effect, specifying by name the railway to be so leased, sold, or transferred, and the company or party by whom such lease, sale, or transfer may be respectively made, granted, or accepted.

9 VICT. cap. 20.

An Act to amend an Act of the Second Year of her present Majesty, for providing for the Custody of certain Monies paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the authority of Parliament.

[18th June, 1846.]

Preamble. WHEREAS an act was passed in the second year of the reign of her present Majesty Queen Victoria, intituled 1 & 2 Vict. c. 117. "An Act to provide for the Custody of certain Monies paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the Authority of Parliament:" And whereas it is expedient that the said act should be repealed, and should be re-enacted, with such modifications, extensions, and alterations as after mentioned :

Recited act repealed. 1. Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said act shall be and is hereby repealed : Provided always, that all acts done under the provisions of the said act shall be good, valid, and effectual to all intents and purposes, and that all sums of money paid under the provisions of the said act shall be dealt with in all respects as if this act had not been passed.

Monies already paid in to be dealt with as directed by former act. Authority to deposit. 2. And be it enacted, That in all cases in which any sum of money is required by any standing order of either House of Parliament, either now in force or hereafter to be in force, to be deposited by the subscribers to any work or undertaking which is to be executed under the authority of an act of Parliament, if the director or person or directors or persons having the management of the affairs of such work or undertaking, not exceeding five in number, shall apply to one of the clerks in the office of the clerk of the Parliaments with respect to any such money required by any standing order of the Lords spiritual and temporal in Parliament assembled, or to one of the clerks of the private bill office of the House of Commons with respect to any

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such money required by any standing order of the Commons in Parliament assembled, to be deposited, it shall be lawful for the clerk so applied to, by warrant or order under his hand, to direct that such sum of money shall be paid in manner hereinafter mentioned; (that is to say,) into the Bank of England, in the name and with the privy of the accountant-general of the Court of Chancery in England, if the work or undertaking in respect of which the sum of money is required to be deposited is intended to be executed in that part of the United Kingdom called England, or into any of the banks in Scotland established by act of Parliament or royal charter, in the name and with the privy of the Queen's remembrancer of the Court of Exchequer in Scotland, at the option of the person or persons making such application as aforesaid, in case such work or undertaking is intended to be executed in that part of the United Kingdom called Scotland, or into the Bank of Ireland, in the name and with the privy of the accountant-general of the Court of Chancery in Ireland, in case such work or undertaking is intended to be made or executed in that part of the United Kingdom called Ireland; and such warrant or order shall be a sufficient authority for the accountant-general of the Court of Chancery in England, the Queen's remembrancer of the Court of Exchequer in Scotland, and the accountant-general of the Court of Chancery in Ireland, respectively, to permit the sum of money directed to be paid by such warrant or order to be placed to an account opened or to be opened in his name in the bank mentioned in such warrant or order.

3. And be it enacted, That it shall be lawful for the Payment of person or persons named in such warrant or order, or the deposit of survivors or survivor of them, to pay the sum mentioned in such warrant or order into the bank mentioned in such warrant or order in the name and with the privy of the officer or person in whose name such sum shall be directed to be paid by such warrant or order, to be placed to his account there *ex parte* the work or undertaking mentioned in such warrant or order, pursuant to the method prescribed by any act or acts for the time being in force for regulating monies paid into the said courts, and pursuant to the general orders of the said courts respectively, and without fee or reward; and every such sum so paid in, or the securities in or upon which the same may be invested as hereinafter mentioned, or the stocks, funds, or securities authorized to be transferred or deposited in lieu thereof as hereinafter mentioned, shall there remain until the same, with all interest and dividends, if any, accrued thereon, shall be paid out of such bank, in pursuance of the provi-

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If money previously invested in government securities, such securities to be deposited.

sions of this act : Provided always, that in case any such director or person, directors or persons having the management of any such proposed work or undertaking as aforesaid, shall have previously invested in the three per centum consolidated or the three per centum reduced bank annuities, exchequer bills or other government securities, the sum or sums of money required by any such standing order of either House of Parliament as aforesaid to be deposited by the subscribers to any work or undertaking which is to be executed under the authority of an act of Parliament, it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, to deposit such exchequer bills or other government securities in the bank mentioned in such warrant or order in the name and with the privity of the officer or person in whose name such sum shall by such warrant or order be directed to be paid, or to transfer such government stocks or funds into the name of the officer or person ; and such transfer or deposit shall be directed by such clerk of the office of the clerk of the Parliaments, or such clerk of the private bill office of the House of Commons, as the case may be, in lieu of payment of so much of the sum of money required to be deposited as aforesaid as the same exchequer bills or other the government stocks or funds will extend to satisfy at the price at which the same were originally purchased by the said person or persons, director or directors as aforesaid, such price to be proved by production of the broker's certificate of such original purchase.

Investment of deposits.

4. And be it enacted, That if the person or persons named in such warrant or order, or the survivors or survivor of them, desire to have invested any sum so paid into the bank of England or the bank of Ireland, or any interest or dividend which may have accrued on any stocks or securities so transferred or deposited as aforesaid, the court in the name of whose accountant-general the same may have been paid may, on a petition presented to such court in a summary way by him or them, order that such sum or such interest or dividends shall, until the same be paid out to the parties entitled to the same in pursuance of this act, be laid out in the three per centum consolidated or three per centum reduced bank annuities, or any government security or securities, at the option of the aforesaid person or persons, or the survivor or survivors of them.

Repayment of deposit.

5. And be it enacted, That on the termination of the session of Parliament in which the petition or bill for the purpose of making or sanctioning any such work or undertaking shall have been introduced into Parliament, or if

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such petition or bill shall be rejected or finally withdrawn by some proceeding in either House of Parliament, or shall not be allowed to proceed, or if the person or persons by whom the said money was paid or security deposited shall have failed to present a petition, or if an act be passed authorizing the making of such work or undertaking, and if in any of the foregoing cases the person or persons named in such warrant or order, or the survivors or survivor of them, or the majority of such persons, apply by petition to the court in the name of whose accountant-general the sum of money mentioned in such warrant or order shall have been paid, or such exchequer bills, stocks, or funds shall have been deposited or transferred as aforesaid, or to the court of exchequer in Scotland, in case such sum of money shall have been paid in the name of the said Queen's remembrancer, the court in the name of whose accountant-general or Queen's remembrancer such sum of money shall have been paid, or such exchequer bills, stocks, or funds shall have been deposited or transferred, shall by order direct the sum of money paid in pursuance of such warrant or order, or the stocks, funds, or securities in or upon which the same may have been invested, and the interest or dividends thereof, or the exchequer bills, stocks, or funds so deposited or transferred as aforesaid, and the interest and dividends thereof, to be paid or transferred to the party or parties so applying, or to any other person or persons whom they may appoint in that behalf; but no such order shall be made in the case of any such petition or bill being rejected or not being allowed to proceed, or being withdrawn or not being presented, or of an act being passed authorizing the making of such work or undertaking, unless upon the production of the certificate of the chairman of committees of the House of Lords with reference to any proceeding in the House of Lords, or of the Speaker of the House of Commons with reference to any proceeding in the House of Commons, that the said petition or bill was rejected or not allowed to proceed, or was withdrawn during its passage through one of the Houses of Parliament, or was not presented, or that such act was passed, which certificate the said chairman or Speaker shall grant on the application in writing of the person or persons, or the majority of the persons named in such warrant, or the survivor or survivors of them: Provided always, that the granting of Proviso. any such certificate, or any mistake or error therein or in relation thereto, shall not make the chairman or Speaker signing the same liable in respect of any monies, stocks, funds, and securities which may be paid, deposited, invested, or transferred in pursuance of the provisions of this act, or the interest or dividends thereof.

(*Scotland.*)

9 & 10 Vict. cap. 28.

An Act to facilitate the Dissolution of certain Railway Companies. [3rd July, 1846.]

Preamble.

WHEREAS it is expedient to facilitate the dissolution of certain railway companies as hereafter mentioned, and to afford facilities for the winding up the concerns of such companies :

Companies may dissolve.

1. May it therefore please your Majesty that it may be enacted ; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That when any persons or companies, before the passing of this act, shall have entered into any contract usually called a subscription contract, or any other agreement or agreements, in writing or otherwise, for the formation of a company or partnership for making any railway which cannot be carried into execution without obtaining the authority of Parliament, and in respect of which an act shall not before the passing of this act have been obtained, it shall be lawful for such persons or companies to dissolve the said company or partnership, contract or agreement, in manner hereinafter mentioned, and that whether or not such contract or agreement shall contain any powers or provisions for dissolution of the company or partnership intended to be thereby formed : Provided nevertheless, that nothing herein contained shall prevent any such persons or companies from exercising any such power or provision for dissolution in their contract or agreement contained, if they shall see fit, at any time before availing themselves of the powers in this act contained : Provided also, that the provisions of this act shall be taken to apply to any contract or partnership for the making any railway, notwithstanding that the agreement or partnership may relate to any other objects in connexion therewith ; and (unless a separate capital and separate subscription shall exist as regards the different objects) then on a dissolution under the provisions of this act the dissolution shall extend to the whole objects of the contract or partnership.

Committee may call meetings to consider dissolution.

2. And be it enacted, That it shall be lawful for the committee, provisional directors, or other persons by such contract or agreement as aforesaid intrusted with the management and carrying into effect of the undertaking, and who are hereinafter called "the committee," to call a meeting of the shareholders for the purpose of determining whether the partnership or company so as aforesaid intended

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to be formed (and which is hereinafter called "the company") shall be dissolved; and that if such meeting shall determine, as after mentioned, that the company shall be dissolved, then as from the date of the resolution come to at such meeting the company shall be taken to be dissolved, and the committee shall not have power to proceed any further with the undertaking.

3. And be it enacted, That it shall be lawful for any five Shareholders, as after defined, by writing under their hands, holders may to require the committee to call a meeting for the purpose require aforesaid; and that if the committee shall refuse or neglect, committee for six days after any such requisition shall have been left to call at the registered place of business of the company, as regards meeting, England and Ireland, and as regards Scotland, at the usual place of business, or shall have been served personally on any member of the committee, to call such meeting by notice as after mentioned, or if for any reason whatever such meeting shall not be convened and held in pursuance of the directions herein contained, it shall be lawful for any five shareholders to call such meeting; and after any such requisition shall have been left or served as aforesaid, it shall not be lawful for the committee or any of them to make any payments out of the monies of such company, except in discharge of *bonâ fide* debts or liabilities, or in performance of contracts or engagements, previously entered into, and in payment of the expenses of calling and holding such meeting or any adjourned meeting, nor to enter into any contracts or engagements on behalf of the company or affecting the property thereof, nor to issue any shares or scrip of or representing the capital stock of such company, until the meeting called as aforesaid shall have determined the question of dissolution.

4. And be it enacted, That the meeting shall be held to Meeting have been duly called, although the votes of the parties duly called, calling the same, or any of such votes, shall be disallowed although at the meeting by the scrutineers to be appointed as votes disallowed.

5. And be it enacted, That the calling of any such Notice of meeting shall be by notice, signed either on behalf of the meeting to committee by any one member of the same, or in case the be by ad-meeting shall be called by the shareholders, then by the vertise-shareholders calling the same, such notice to be advertised in the London Gazette eight clear days and not more than fifteen days before the time to be therein fixed for holding such meeting; and also within the before-mentioned limits as to time in three London daily newspapers; that in the case of railways to be made in Ireland, the said notice shall also be advertised within the before-mentioned limits *as to time in the Dublin Gazette, and in two newspapers in* *(Scotland.)*

common circulation in the city of Dublin ; and as to railways to be made in Scotland, the said notice shall also be advertised, within the before-mentioned limits as to time, in the Edinburgh Gazette and in two newspapers in common circulation in the city of Edinburgh.

Day &c. of meeting. 6. And be it enacted, That every notice of meeting shall specify the day, hour, place, and purpose of meeting ; and the parties entitled to be present at such meeting shall be the persons producing the shares, scrip, or receipts hereinafter defined or the proxies after-mentioned.

Chairman. 7. And be it enacted, That every meeting so called shall elect a chairman within one hour of the time appointed for holding such meeting, and that the person to be in the chair at every such meeting shall be some member of the committee, to be elected by a majority of the members of the committee present at the meeting, and in case the votes of the members of the committee present shall be equally divided, or if from any cause there shall be no member of the committee so elected, then some shareholder entitled to vote shall be elected by the meeting ; and every person present, either in respect of shares or of a proxy, shall have one vote only for the election of the chairman, and scrutineers ; and every chairman shall have a casting vote, in addition to any other vote which he may be entitled to ; and if any such chairman shall refuse to give his casting vote on the question of dissolution or bankruptcy as after mentioned, the question shall be considered as carried in the affirmative for dissolution or bankruptcy.

Chairman bound to put questions proposed, and no other business. 8. And be it enacted, That the chairman at every such meeting shall be bound to put to the meeting any question proposed for the dissolution of the company, or as to the bankruptcy thereof, and also as to the election of scrutineers, and that no business shall be transacted at any such meeting other than the consideration of any such question so proposed, and the election of a chairman and scrutineers.

Scrutineers to be elected. 9. And be it enacted, That immediately after the election of a chairman the meeting shall proceed to elect as scrutineers three shareholders in the company, whose business it shall be to verify as after mentioned, and take the votes of the shareholders entitled to vote, and cast up and declare the same, and the decision in writing of them or of any two of them shall be final in all respects.

Case of the chairman not being entitled to vote. 10. And be it enacted, That in case it shall be discovered by or shown to the scrutineers that the chairman at any meeting is not entitled to vote as a shareholder, it shall be lawful for the meeting either to elect a new chairman or to maintain such existing chairman, but such chairman so maintained in office shall not thereby acquire the right of voting as a shareholder, or of giving a casting vote ; and in case the

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votes shall be equally divided the resolutions shall be considered as carried in the affirmative for the dissolution and as to the bankruptcy of the company : Provided always, that all votes, acts, and deeds by any chairman not entitled to vote, or by the meeting presided over by him, given or done before the discovery of his not being so entitled, or given afterwards if he be so maintained, shall be valid and effectual ; and, as regards the election of chairman and scrutineers by the votes of the parties present, and producing scrip or proxies, no objection after the election shall be made on its being shown that they were not entitled to be present.

11. And be it enacted, That at any such meeting as Adjourned, in the event of the prescribed quorum after mentioned not being present and voting at such meetings, then the chairman shall cause the votes of the persons constituting the said meeting to be taken and quorum recorded, and shall then adjourn the same to be held at the same place, and at a day to be declared by the chairman, such day not being less than three days and not more than one week from the original day of meeting, such day and the time of meeting in the meantime, as regards any meeting held in any part of England, being advertised twice in each of three London daily newspapers, and in the case of a meeting held at Edinburgh twice in two Edinburgh newspapers, and in the case of a meeting held in Dublin twice in two Dublin newspapers ; and at such adjourned meeting the votes of such persons constituting the same as had not voted at the original meeting shall be taken and recorded, and the total amount of votes given at the original and adjourned meeting shall be received as if given at one and the same meeting.

12. And be it enacted, That the only persons entitled to be present and vote at any such meeting as shareholders by themselves or proxies shall be those persons who shall for the time being be in possession of and produce certificates or receipts declaring parties entitled to shares in any company, or acknowledging the receipt of a deposit in such company, usually termed "scrip" or "receipts" for deposits on shares, and that notwithstanding the party in possession may not be the party to whom the same was originally granted, or that the same may not have been legally assigned to the party in possession, or notwithstanding the same may be possessed by the holder as a mere mortgagee, or in any other manner, or the same may be subject to any charge or lien, and which parties are by this act called "shareholders;" provided that nothing herein contained shall authorize more than one vote, either for dissolution or bankruptcy, to be given in respect of the same share, not-

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withstanding any transfer or delivery of such share after a vote shall have been given in respect thereof.

Scale of voting.

13. And be it enacted, That every shareholder shall, in voting on the questions of dissolution and bankruptcy, be entitled to one vote, by himself or proxy, in respect of every share held by him, or in respect of which scrip or receipts may have been issued or deposits paid, and that all shareholders producing such shares, scrip, or receipts shall be entitled to attend meetings and to appoint proxies according to the form contained in the schedule hereunto annexed, or in some form to the like effect: provided always, and be it enacted, That the fact of any such party attending any such meeting shall not in anywise increase or alter, either in law or equity, his rights or liabilities.

Proxies.

14. And be it enacted, That the appointment of any such proxy shall be signed by the party appointing the same before a master or master extraordinary of the Court of Chancery in England or Ireland, or a justice of the peace in England or Ireland, or before a sheriff or sheriff substitute or justice of the peace in Scotland, or where such shares, scrip, or certificate shall be in possession of any parties beyond seas, the said proxy shall be signed as aforesaid before any of her Majesty's consuls or vice-consuls, or a notary public; and that on signing the same, the share, scrip, or receipt in respect of which the proxy is intended to be appointed shall be produced to the master, justice, sheriff, sheriff substitute, consul, vice-consul, or notary public; and the number of the shares, or the number of shares referred to in such scrip or receipt, and the name of the company, shall be ascertained and verified, with the number and name of the company stated in the appointment of proxy, before such master, sheriff, sheriff substitute, justice, consul, vice-consul, or notary public.

Quorum of meetings and majority.

15. And be it enacted, That to constitute a meeting under the provisions of this act for the purpose of deciding on a dissolution or bankruptcy, persons representing at least one third part of the shares in the undertaking actually issued or given, either as shares, scrip, or receipts, must be present and vote; and that for the purpose of effecting a dissolution, and as to bankruptcy, there must be either a majority of the votes of the whole scrip of the company issued as aforesaid, or at least three-fifths of the votes of persons present, and voting either as shareholders or proxies, in favour of the motion for dissolution, and for the bankruptcy, if so resolved on.

Minutes of proceedings to be advertised;

16. And be it enacted, That the chairman at every such meeting shall sign a minute of the proceedings, and that every minute so signed shall be advertised within the shortest possible time in the same papers as those in which notice

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of the original meeting is hereinbefore required to be given; and a copy of the London Gazette containing the advertisement of such minute shall be evidence of the meeting having been duly called and held, and of the resolutions recorded having been duly passed by the majorities therein mentioned; and such minutes shall be countersigned by at least two of the three scrutineers aforesaid; and that any party signing minutes false or incomplete in any material particular, or any person who shall insert false. or cause to be inserted in the London Gazette any advertisement under the present clause, knowing the same to be false in any material particular, shall be guilty of a misdemeanor; and the minute directed to be advertised shall also be registered with the registrar of joint stock companies, without any fee being chargeable for such registration.

17. And be it enacted, That as regards all projected railways as aforesaid, any portion of the intended line of which is situate in England or Wales, the meeting aforesaid may be held, as shall be specified in the notice calling the same, either in London or Westminster, or at the registered place of business of the company; or as regards any railways any portion of the intended line of which is situate in the counties of Lancaster or Chester, such meeting may be held at Manchester or Liverpool, notwithstanding that the registered place of business may not be at either of such places; or as regards any railways any portion of the intended line of which is situate in the county of York, such meetings may be held at York or Leeds, notwithstanding that the registered place of business may not be at either of such places; that as regards railways situate in Ireland, the meetings may be held either in London or Dublin, or at the registered places of business, as shall be specified in the notice; and that as regards railways situated in Scotland, the meetings may be held either in London or Edinburgh, or at the usual places of business, as shall be specified in the notice.

18. And be it enacted, That no parties shall be entitled to No votes vote, except in respect of scrip receipts or shares actually issued or given before the 31st day of March, 1846, and that scrip &c. the shares, scrip, or receipts actually issued or given shall for the purposes of this act be taken to constitute the whole number of shares in the undertaking, although the contract may have provided that the undertaking shall consist of a greater number; and that for the purpose of ascertaining the number of shares, scrip, or receipts actually issued or given, the committee of every projected railway company to which the powers given by this Act apply (except in regard to Railways to be made in Scotland.)

No votes
actually issued or given
on
31st day of
March,
1846.

Mode of ascertaining the issues.

7 & 8 Vict. c. 110.

Registrar of joint stock companies to require return of issues.

Committees of projected railways in Scotland to lodge a return with the sheriff clerk of Edinburgh within twelve days from passing of this act.

The sheriff clerk to give notice by adver-

(land) shall, within 12 days after the passing of this act, be bound to send in unto the registrar of joint stock companies a return in writing, under the hand of any member of such committee, specifying the number of shares, scrip, or receipts actually issued or given as aforesaid, the amount of each share, and of the deposit paid or to be paid thereon ; and that in case such return shall not be so sent in within the aforesaid period, every member of the committee shall forfeit a sum not exceeding twenty pounds, to be recovered in like manner as any penalty under the act, intituled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies," is recoverable.

19. And be it enacted, That the registrar of joint stock companies shall, within 6 days from the passing of this act, send to the registered place of business of every such company a notice in writing under his hand requiring such return to be made ; but the omission to send any such notice by the registrar shall not exempt the committee of any such company from the penalties aforesaid ; and every person shall be at liberty to inspect any returns made to the registrar under this act on payment of a fee of 2s. 6d. ; and the certificate of the said registrar, under his seal of office, as to the total amount of the shares, scrip, or receipts, shall be evidence as to the amount specified in such return, and for such certificate a fee of 2s. 6d. shall be paid ; and no proceedings at any meeting shall be invalidated by reason of any defect or error in such return, but any party making such return knowing it to be false shall be guilty of a misdemeanor.

20. And be it enacted, That in regard to projected companies for railways to be made in Scotland the committee of every such company to which the powers given by this Act apply shall, within 12 days after the passing of this Act, be bound to lodge with the sheriff clerk of the shire of Edinburgh a return in writing under the hand of a quorum of such committee, or of every member thereof, specifying the number of shares, scrip, or receipts actually issued or given as aforesaid, the amount of each share, and the deposit paid or to be paid thereon ; and that in case such return shall not be lodged within the aforesaid period every member of such committee shall forfeit a sum not exceeding twenty pounds, to be recovered by summary petition to the court of session at the instance of the said sheriff clerk.

21. And be it enacted, That the said sheriff clerk shall, within 6 days after the passing of this Act, cause to be published in the Edinburgh Gazette, and in two newspapers in common circulation in the city of Edinburgh, a notice by

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him requiring such returns to be made; and every person tisement shall be at liberty to inspect any returns made to the sheriff for returns clerk; and no proceeding at any meeting shall be invalidated by reason of defect or error in any such return, but to be made. any party making such return, knowing it to be false, shall be held to be guilty of falsehood and fraud, and shall be liable to prosecution and punishment accordingly; and the necessary expenses of the sheriff clerk in regard to such returns and notices shall be paid by the several committees making or bound to make returns, and shall be recovered in such amount from each of such committees as the sheriff of the shire of Edinburgh shall by a writing under his hand fix and determine.

22. Provided always, and be it enacted, That if by In default any reason whatever such return of the number of shares, of return, scrip, or receipts actually issued shall not be made within meeting to one calendar month from the passing of this Act, then represent a meeting may be called and held under the provisions of this Act, and may resolve on dissolution or bankruptcy as by this Act is provided, if persons representing shares as before defined equal to at least one third part of the whole capital of the undertaking are present and vote; and any such meeting shall have the same powers as before conferred on a meeting representing one third of the shares actually issued as aforesaid.

23. And be it enacted, That in addition to the question Meeting to of dissolution, it shall be imperative on the meeting to decide whe- decide whether such dissolution shall or shall not be taken ther disso- to be an act of bankruptcy for the purpose of having the lution be affairs of the company wound up under the provisions act of of the act after mentioned; but this provision shall not bankruptcy. extend to the case of railways to be made in Scotland.

24. And be it enacted, That in case the meeting shall Subject resolve that the affairs of the company shall not be so thereto, wound up, or in the case of a railway to be made in Scot- companies land, if the majority shall resolve in favour of dissolution, to be wound then (subject to the power hereinafter given to the com- up like or- mittee and to creditors of the company to petition for a ninary part- fiat) the affairs of the said company shall be wound up nerships. according to the rules applicable to the dissolution of part- nership undertakings, and as if the undertaking had been dissolved by mutual consent.

25. Provided always, and be it enacted, That the reso- Dissolution lution to dissolve the company, or the actual dissolution not to affect thereof, shall not alter or affect the rights of creditors or rights of other persons not being shareholders in the company, nor creditors. any engagements whatsoever which the committee may have entered into, and shall not affect any suits pending before the passing of this act.

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If proposal
of dissolu-
tion re-
jected, no
new meet-
ing to be
called for
six months.

The com-
mittee, or
creditors,
may peti-
tion for a
fiat in bank-
ruptcy.

On issuing
of fiats,
companies
to be sub-
ject to the
provisions
of the Joint
Stock Com-
panies
winding-up
Act.
7 & 8 Vict.
c. 111.

8 & 9 Vict.
c. 98.

Sequestra-
tion of
estates of
dissolved
Scotch
railway
companies
may be
awarded.

26. And be it enacted, That where any meeting called to consider the question of dissolution shall have determined the question of the dissolution of the company in the negative, no new meeting shall be called to consider the question of dissolution, or any matter relating thereto, until the lapse of six months from the day in which the question was last resolved in the negative.

27. And be it enacted, That it shall be lawful for any three of those who were of the committee of any company so dissolved, at any time after the dissolution thereof shall have been resolved, or for any creditor or creditors of such company to such amount as is now by law requisite to support a fiat in bankruptcy in England and Ireland, or a sequestration in Scotland, within three months after the dissolution thereof shall have been resolved, to petition that a fiat in bankruptcy may issue against such company if in England or Ireland, or that the estates of the company may be sequestrated if in Scotland.

28. And be it enacted, That upon the production of a copy of the London Gazette containing the resolution of any such meeting as aforesaid, whereby it shall be resolved that the dissolution of the company shall be an act of bankruptcy, or upon the petition of any three of the committee as aforesaid, or of any creditor under the last preceding clause, a fiat in bankruptcy shall issue against such company by the registered name or style of such company ; and the company shall thereupon be deemed to be within the provisions of an act passed in the 7th and 8th years of the reign of her present Majesty, intituled "An Act for facilitating the winding up of Joint Stock Companies unable to meet their pecuniary engagements," and of another act passed in the eighth and ninth years of the reign of her present Majesty, intituled "An Act to facilitate the winding up of Joint Stock Companies in Ireland unable to meet their pecuniary engagements," in all respects as if a fiat in bankruptcy had issued against it under the said Act before its dissolution ; but this last provision not to extend to Scotland.

29. And be it enacted, That if the company be a company for making a railway or railways in Scotland sequestration of the estates of such company shall be awarded on petition for sequestration in common form presented in name of any three of the committee, or of any creditor or creditors of such company to such amount and on such evidence of debt or debts of such creditor or creditors as is now by law requisite for obtaining sequestration of the estates of any company liable to sequestration, there being always produced along with the petition for sequestration a copy of the London or Edinburgh Gazette containing the resolution whereby the dissolution of the company shall have
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been resolved upon; and such sequestration, being so awarded, shall be followed out, in regard to the election of an interim factor and trustee and commissioners, and in regard to the proof and ranking of debts, the recovery and distribution of the estate, and all other matters necessary thereto, in the same manner and by the same course of procedure, as nearly as may be, as is by law provided in cases of sequestration of the estates of trading companies in Scotland: Provided always that such sequestration shall not extend to or affect the estates of the individual partners of the company, nor preclude the rights or remedies otherwise competent by law to the creditors of such company against the individual partners thereof, or the estates of such individual partners.

30. And be it enacted, That when any company for As to new making any railway, actually incorporated before the railways by passing of this act, shall have agreed to form any new or incorporate other railway or an extension thereof, and in respect of which a new or further capital shall have been agreed to be raised or contributed, and shares as hereinbefore defined shall have been issued or otherwise appropriated, and deposits paid thereon, then such company or partnership (as regards the new undertaking) shall in all respects be considered as a company or undertaking within the provisions of this act; and meetings shall be held, and shareholders entitled to shares as aforesaid in the new undertaking shall in manner hereinbefore provided have power to dissolve such new undertaking, and to decide as to bankruptcy, in all respects as is provided with regard to the companies hereinbefore mentioned or defined.

31. And be it enacted, That where the dissolution of a Member company shall have been resolved under this act, if judgment shall have been recovered or shall afterwards be recovered in any action against any member of the committee for any debt due from such company or from such committee in respect of the undertaking, the member against whom such judgment shall have been recovered shall be entitled at law to a contribution from each of the other members of such committee towards the payment of the monies recovered by such judgment, and of all costs and expenses in relation thereto, of such a share of the whole amount of such monies, costs, and expenses as would have been borne by such respective member upon an equal contribution by all the members of such committee, and may recover the contributions to which he may be so entitled, or any of them, by action or actions of debt or on the case against all or any of such other members of such committee, but so that no such member shall be liable in any such action as aforesaid for more than the share to which he

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shall respectively be liable to contribute under this provision.

Settlement of bills of attorneys, solicitors, and agents. 32. And be it enacted, That after the dissolution of any company shall have been resolved under this act no action or suit shall be brought for the recovery of any fees, charges, or disbursements for any business done for such company by any attorney or solicitor, whether in his character of attorney or solicitor, or as agent or otherwise, until the expiration of one calendar month after a bill of such fees, charges, and disbursements, signed by the claimant, shall have been delivered to the committee or official assignee authorized to wind up the affairs of such company, or left at their or his place of business ; and it shall be lawful for the Court of Queen's Bench, Common Pleas, or Exchequer, or any judge of either of such courts, and they are respectively hereby required, on the application of such committee or of such official assignee, to refer such bill to be taxed and settled by any taxing officer of the court in which such reference shall be made ; and the court or judge making such reference shall restrain the claimant from commencing any action or suit touching his demand pending such reference, and such taxing officer may take such evidence in relation to such bill as he may think fit ; and the costs of such reference shall be paid according to the event of such taxation, (that is to say,) if such bill when taxed be less by a sixth part than the bill delivered, then the claimant shall pay such costs, and if the bill when taxed shall not be less by a sixth part than the bill delivered, then the party on whose application the reference shall have been made shall pay such costs, to be considered and allowed nevertheless as part of the costs, charges, and expenses of executing the trusts and powers of this act ; and every order to be made for such reference shall direct the officer to whom such reference shall be made to tax such costs of such reference to be so paid as aforesaid, and to certify what upon such reference shall be found to be due to or from such claimant in respect of such bill, and of the costs of such reference, and after such reference as aforesaid no further or other sum than shall be so found due shall be recoverable in respect of such bill.

Interpretation of act.

33. And be it enacted, That the following words and expressions shall have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or subject matter ; (*videlicet,*) The word "month" shall mean calendar month : The word "person" shall include corporations.

Act may be amended.

34. And be it enacted, That this act may be amended, altered, or repealed by any act to be passed in this session of Parliament.

(*Scotland.*)

SCHEDULE.

Railway Company.

Proxy to vote in respect of Shares.
I A. B. of holder of shares Form of
[or scrip, or receipts for shares (as the case may be)] proxy.
numbered respectively [here insert the numbers, unless the
shares, scrip, receipts, or letter do not show the denoting
numbers], in the projected railway company,
do hereby appoint C. D. of to be my
proxy upon any matter relating to the dissolution [or
bankruptcy] of the said company, to vote, dissent, and act
as he shall think proper.

Witness my hand, the day of
Taken before me, having verified the numbers
and name of the company with the docu-
ments produced to me,

Signed

And add whether,

Master extraordinary, sheriff, sheriff-sub-
stitute, justice, consul, vice-consul, or
notary-public.

9 & 10 VICT. cap. 57.

An Act for regulating the Gauge of Railways.
[18th August, 1846.]

WHEREAS it is expedient to define the gauge on which Preamble.
railways shall be constructed.

1. Be it enacted by the Queen's most excellent Majesty, On what
by and with the advice and consent of the Lords spiritual gauge rail-
and temporal, and Commons, in this present Parliament ways shall
assembled, and by the authority of the same, That after the be made.
passing of this act it shall not be lawful (except as herein-
after excepted) to construct any railway for the conveyance
of passengers on any gauge other than four feet eight inches
and half an inch in Great Britain, and five feet three inches
in Ireland: Provided always, that nothing hereinbefore Proviso.
contained shall be deemed to forbid the maintenance and
repair of any railway constructed before the passing of this
act on any gauge other than those hereinbefore specified,
or to forbid the laying of new rails on the same gauge on
which such railway is constructed within the limits of de-
viation authorized by the several acts under the authority
of which such railways are severally constructed.

(Scotland.)

x 2

Exception
of certain
railways.

2. And be it enacted, That nothing hereinbefore contained shall apply to any railway constructed or to be constructed under the provisions of any present or future act containing any special enactment defining the gauge or gauges of such railway, or any part thereof, or to any railway which is in its whole length southward of the Great Western Railway, or to any railway in any of the counties of Cornwall, Devon, Dorset, or Somerset, for which any act has been or shall be passed in this session of Parliament, or to any railway in any of the last-mentioned counties now in course of construction, or to the two railways severally to be constructed under the authority of two acts passed in this session of Parliament, severally intituled "An Act for making a Railway from the Great Western Railway at West Drayton to Uxbridge in Middlesex," and "An Act for making a Railway from the Great Western Railway at Maidenhead in Berkshire to the town of High Wycombe in the county of Buckingham;" or to so much of an act passed in this session, intituled "An Act to authorize certain Extensions of the Line of the Oxford, Worcester, and Wolverhampton Railway, and to amend the act relating thereto, as authorizes the construction of a Branch Railway from the Oxford, Worcester, and Wolverhampton Railway to the town of Witney in the county of Oxford;" or to an act passed or which may be passed in this session of Parliament, "to authorize the construction of a railway from Melin-y-Manach to Rhydydefydd in the county of Glamorgan."

Certain
railways to
be on the
broad
gauge.

3. And be it enacted, That the several railways authorized to be constructed by an act passed in the last session of Parliament, intituled "An Act for making a Railway to be called The South Wales Railway," and by an act also passed in the last session of Parliament, intituled "An Act for making a Railway from Monmouth to Hereford, with branches therefrom to Westbury and to join the Forest of Dean Railway," and by two acts passed in this session of Parliament, severally intituled "An Act for completing the Line of the South Wales Railway, and to authorize the Construction of an Extension and certain Alterations of the said Railway, and certain Branch Railways in connexion therewith," and "An Act for making a Railway communication between the city of Bristol and the proposed South Wales Railway in the county of Monmouth, with a Branch Railway therefrom," shall be constructed on the gauge of seven feet.

Gauge not
to be
altered.
Provision

4. And be it enacted, That it shall not be lawful after the passing of this act to alter the gauge of any railway used for the conveyance of passengers.

5. And be it enacted, that nothing hereinbefore con-
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tained shall be deemed to affect the provisions of two acts as to the passed in the last session of Parliament, respectively in Oxford and tituled "An Act for making a Railway from the city of Ruby, and Oxford to the town of Rugby," and "An Act for making a Railway from Oxford to Worcester and Wolverhampton, with respect to the gauge on which they are to be formed, or the additional rails which, according to the several provisions of the last two recited acts, are to be or may be laid down and maintained on the railways thereby authorized, or with respect to the powers thereby conferred on the commissioners of her Majesty's privy council for trade and foreign plantations concerning the construction and use of the railways thereby authorized.

6. And be it enacted, That if any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this act, the company authorized to construct the railway, or in the case of any demise or lease of such railway, the company for the time being having the control of the works of such railway, shall forfeit ten pounds for every mile of such railway which shall be so unlawfully constructed or altered, during every day that the same shall continue so unlawfully constructed or altered; and in estimating the amount of any such penalty any distance less than one mile shall be estimated as a mile.

7. And be it enacted, That, over and above the penalty hereinbefore provided, if any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this act, it shall be lawful for the commissioners of her Majesty's woods, forests, land revenues, may be works, and buildings, or for the lords of the committee of her Majesty's privy council for trade and foreign plantations, to abate and remove the same or any part thereof so constructed or altered contrary to the provisions of this act, and to restore the site thereof to its former condition.

8. And be it enacted, That all penalties under this act may be recovered from the company liable to pay and make penalties good the same, as under the provisions of an act passed in the last session of Parliament, intituled "An Act for consolidating in one act certain provisions usually inserted in acts authorizing the making of railways," a penalty for any infringement of the last-recited act is recoverable against a company authorized to construct a railway.

9. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

9 & 10 VICT. cap. 105.

An Act for constituting Commissioners of Railways.
[28th August, 1846.]

Preamble. WHEREAS by an act passed in the fourth year of the
 3 & 4 Vict. reign of her Majesty, intituled "An Act for Regulating
 c. 97. Railways;" and by another act passed in the sixth year
 5 & 6 Vict. of the reign of her Majesty, intituled "An Act for the
 c. 55. better Regulation of Railways, and for the Conveyance of
 Troops;" and by another act passed in the eighth year
 7 & 8 Vict. of the reign of her Majesty, intituled "An Act to attach
 c. 85. certain Conditions to the Construction of future Railways
 authorized or to be authorized by any act of the present
 or succeeding sessions of Parliament, and for other pur-
 8 & 9 Vict. poses relating to Railways;" and by two other acts passed
 cc. 20, 33. in the last session of Parliament, for consolidating in one
 act certain provisions usually inserted in acts authorizing
 the making of railways, respectively, and by sundry local
 acts of Parliament, certain powers with respect to rail-
 ways are vested in the lords of the committee of her
 Majesty's most honourable privy council for trade and
 foreign plantations; but it is expedient that a separate
 department be constituted for these purposes, and for other
 purposes relating to railways:

Her Majes- ty empow- ered to ap- point com- missioners of railways, one of whom to be president, and from time to time remove them.

1. Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for her Majesty, by warrant under the royal sign manual, to appoint any number, not more than five persons, to be commissioners of railways, and from time to time, at her pleasure, to remove all or any of the said commissioners, and to appoint others in their stead, and to appoint one of the said commissioners to be their president; and any two of the said commissioners shall be competent to act in the execution of the powers vested in them by this act; and upon any vacancy in the number of the said commissioners, it shall be lawful for the surviving or continuing commissioners, not being less than two, to act, and their acts shall be as valid as if no such vacancy had occurred; and every such appointment or new appointment, and also the day on which the said commissioners shall begin to act in execution of this act, shall be published in the London Gazette.

Powers of board of trade trans- 2. And be it enacted, That from and after the day which shall be so specified in the London Gazette as the day on which the said commissioners shall begin to act in execu-

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tion of this act, all the powers, rights, and authority now vested in or exercised by the lords of the committee of her Majesty's privy council for trade and foreign plantations by virtue of the recited acts, or by any other act of Parliament, or otherwise howsoever, with respect to any railway or intended railway, shall be transferred to and vested in and exercised by the commissioners of railways, as fully as if they had been named in the said several acts of Parliament instead of the lords of the said committee; and all provisions of the said acts shall be deemed to apply to the said commissioners instead of the lords of the said committee; and all proceedings now pending before the lords of the said committee, or carried on under their authority, shall be continued and carried on by and before the said commissioners, who shall have and exercise the same powers, rights, and authority in respect of all such proceedings as if they had been originally commenced before the said commissioners.

3. And be it enacted, That an office shall be provided in London or Westminster, under the directions of the commissioners of her Majesty's treasury, for the use of the commissioners appointed under this act, at or to which all notices and other documents shall be given or sent which are now by law required to be given or sent at or to the office of the lords of the said committee.

4. And be it enacted, That the commissioners of railways shall cause a seal to be made for the purposes of their commission, and all orders and other documents proceeding from the said commissioners, and purporting to be sealed or stamped with the seal of the said commissioners, and signed by two or more of the said commissioners, shall be received as evidence of the same respectively in all courts and before all justices and others, without any further proof thereof.

5. And be it enacted, That the said commissioners may appoint and at their pleasure remove a secretary and so many other officers and servants as to them, subject to the approval of the commissioners of her Majesty's treasury, shall appear necessary for carrying on the business of the said commission.

6. And be it enacted, That the president and two other commissioners, and the secretary, officers, and servants of the said commissioners, shall be paid by such salaries as shall be from time to time appointed by the commissioners of her Majesty's treasury, not exceeding the sum of two thousand pounds in the case of the president, and the sum of one thousand five hundred pounds in the case of either of the two other paid commissioners, and in the case of the secretary and other officers and servants of the said com-

(*Scotland.*)

mission, such fit salaries as shall be from time to time appointed, with due reference to their several stations and the duties they will have to perform.

President
not dis-
qualified to
sit in Par-
liament.

7. And be it enacted, That the office of the said president shall not be deemed such an office as shall render him incapable of being elected or of sitting or voting as a member of the Commons House of Parliament, or as shall avoid his election if returned, or render him liable to any penalty for sitting or voting in Parliament.

Unpaid
commis-
sioners not
disqualified
to sit in
Parliament.

8. And be it declared and enacted, That the office of any other of the said commissioners who shall not be entitled to receive a salary by reason of his appointment to such office, shall not be deemed such an office as shall render him incapable of being elected or of sitting or voting as a member of the Commons House of Parliament, or as shall avoid his election if returned, or render him liable to any penalty for so sitting or voting ; and if any such unpaid commissioner shall be a member of the House of Commons at the time of his appointment, his acceptance of such appointment shall not avoid his election or vacate his seat in Parliament ; and for the purpose of distinguishing which commissioners are qualified to sit in Parliament under this act, the warrant appointing any such commissioner shall specify that he will not be entitled, by virtue of such appointment, to receive any salary or remuneration whatsoever.

Commis-
sioners to
exercise
powers
vested in
board of
trade.

9. And whereas in some cases railway companies have exceeded the powers given to them under the acts constituting them, or have otherwise acted contrary to the provisions of the said acts, or of the general acts for regulating railways, be it enacted, That it shall be the duty of the said commissioners to prevent any such unlawful proceedings, by the exercise of any powers now vested in the lords of the said committee.

Commis-
sioners to
report to
her Majesty
and both
Houses of
Parliament
upon any
case speci-
ally referred
to them.

10. And be it enacted, That it shall be the duty of the said commissioners to examine and report to her Majesty and both Houses of Parliament upon any subject relating to any railway, or proposed railway, which shall be specially referred to them for their opinion by her Majesty, or by either House of Parliament ; and in the case of any application to Parliament for any act for making or maintaining any railway, it shall be their duty, if so directed by her Majesty or by the authority of either House of Parliament, to inquire and report, on local inspection or otherwise,—

Firstly, Whether there are any lines or schemes competing with the proposed railway :
Secondly, Whether by such bill it is proposed to take powers for uniting with such railway, or proposed
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railway, any other railway or canal, or to purchase or lease any railway, canal, dock, road, or other public work, undertaking, or easement :

Thirdly, Whether by such bill it is proposed to constitute any branch railway, or any other work in connexion with the proposed railway :

Fourthly, Whether any plans, maps, and sections of any such proposed railway which, pursuant to any order of either House of Parliament, shall have been deposited in their office, are correct, and if not, in what particulars and how far they are incorrect, and whether or not, in the opinion of the commissioners, such errors as they shall find are material to the object for which such plans and sections are required.

11. And be it enacted, That for the purposes aforesaid the said commissioners shall be empowered, by themselves, or by such inspectors as they shall appoint for that purpose, to inspect and survey any proposed line of railway, and for the purposes of any such survey they and their inspectors shall have all the powers which, under an act passed in the fifth year of the reign of her Majesty, intituled "An Act to authorize and facilitate the completion of a Survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man," any officers or persons appointed by or acting under the orders of the Master-General and Board of Ordnance have for the purpose of making and carrying on any survey authorized by the last-recited act; and all the provisions of the last-recited act in anywise relating to any such survey shall be deemed to apply, so far as they are applicable, to any survey which may be directed by the said commissioners under this act, provided that all allowances and payments made under this act of the same kind as those which by the last-recited act are to be paid out of the aids granted by Parliament to her Majesty on account of the Board of Ordnance, and also all other expenses incurred by the commissioners in making such survey and inspection, shall be paid by the provisional committee or directors or other persons who shall be the promoters of the said intended railway; and in case of non-payment of the same in any case, the amount of such allowances, payments, and expenses shall be deemed a specialty debt due to her Majesty from such committee men, directors, and other persons, and each of them severally, and shall be sued for and recovered accordingly.

12. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

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